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

GULF COAST ECOSYSTEM RESTORATION COUNCIL

2 CFR Part 5900

[Docket Number: 109092024–1111–04]

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

AGENCY: Gulf Coast Ecosystem Restoration Council.
ACTION: Final rule.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes this rule to supersede the Council’s regulation for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in connection with the Office of Management and Budget’s (OMB) recent revisions to its guidance on Grants and Agreements.

DATES: This rule is effective October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joshua Easton at 504–252–7717 or joshua.easton@restorethegulf.gov.

SUPPLEMENTARY INFORMATION: On April 22, 2024, OMB issued a final rule revising its Guidance for Grants and Agreements, henceforth to be known as the OMB Guidance for Federal Financial Assistance, effective October 1, 2024 (89 FR 30046, April 22, 2024). The Council publishes this final rule to adopt OMB’s revisions to 2 CFR part 200, except for 2 CFR 200.322(c).

Classification

Paperwork Reduction Act

This rule contains no collections of information subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3506). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless

that collection displays a currently valid OMB Control Number.

Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 2 CFR Part 5900

Accounting, Administrative practice and procedure, Education, Grant programs, Grants administration.

For the reasons set forth above, part 5900 of title 2, chapter LIX of the Code of Federal Regulations is amended as follows:

PART 5900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 5900 continues to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 1321(t)(2); 2 CFR part 200.

■ 2. Section 5900.101 is revised to read as follows:

§ 5900.101 Adoption of 2 CFR part 200.

The Gulf Coast Ecosystem Restoration Council adopts the Office of Management and Budget guidance in 2 CFR part 200, as revised effective October 1, 2024, except for 2 CFR 200.322(c) (collectively, OMB guidance). This part gives regulatory effect to the OMB guidance.

Keala Hughes,

*Director of External Affairs & Tribal Relations
Gulf Coast Ecosystem Restoration Council.*

[FR Doc. 2024–20667 Filed 9–13–24; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. AMS–CN–24–0008]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2024 Amendments)

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

ACTION: Direct final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations, decreasing the value assigned to imported cotton for the purposes of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This amendment is required each year to ensure that assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is updating the Import Assessment Table to account for changes since the last assessment adjustment in 2023.

DATES: This direct final rule is effective November 15, 2024, without further action or notice, unless significant adverse comment is received by October 16, 2024. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments concerning this direct final rule. Comments may be submitted by mail or hand delivery to Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406 or via the internet at: <https://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this direct final rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361-2726, facsimile (540) 361-1199, or email at CottonRP@usda.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624, 104 Stat. 3909, November 28, 1990). These amendments contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions provided for: (1) the assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior to the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17-26, 1991, and the amended Order was published in the **Federal Register** on December 10, 1991 (56 FR 64470). A proposed rule implementing the amended Order was published in the **Federal Register** on December 17, 1991 (56 FR 65450). Implementing rules were published on July 1 and 2, 1992 (57 FR 29181) and (57 FR 29431), respectively.

This direct final rule amends the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)) that is used to determine the Cotton Research and Promotion assessment on imported cotton and cotton products. The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported—levied at a rate of \$1 per bale of cotton, which is equivalent to 500 pounds, or \$1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton.

Section 1205.510(b)(2) of the Cotton Board Rules and Regulations provides for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the

assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices*, a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in 2023 in the **Federal Register** (88 FR 55345) for the purpose of calculating assessments on imported cotton is \$0.014691 per kilogram. Using the average weighted price received by U.S. farmers for Upland cotton for the calendar year 2023, this direct final rule amends the new value of imported cotton to \$0.013247 per kilogram to reflect the price received by U.S. farmers for Upland cotton during 2023.

An example of the complete assessment formula and how the figures are obtained is as follows:¹

One bale is equal to 500 pounds.

One kilogram (kg) equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

**One Dollar per Bale Assessment
Converted to Kilograms**

A 500-pound bale equals 226.8 kg. (500×0.453597).

\$1 per bale assessment equals \$0.002000 per pound or 0.2000 cents per pound (1/500) or \$0.004409 per kg or 0.4409 cents per kg. ($1/226.8$).

**Supplemental Assessment of 5/10 of
One Percent of the Value of the Cotton
Converted to Kilograms**

The 2023 calendar year weighted average price received by producers for Upland cotton is \$0.802 per pound or \$1.768 per kg. (0.802×2.2046).

Five tenths of one percent of the average price equals \$0.008838 per kg. (1.768×0.005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the \$1 per bale equivalent assessment of \$0.004409 per kg and the supplemental assessment \$0.008838 per kg, which equals \$0.013247 per kg.

The current assessment on imported cotton is \$0.014691 per kilogram of imported cotton. The revised assessment in this direct final rule is

\$0.013247, a decrease of \$0.001444 per kilogram. This reflects the decrease in the average weighted price of Upland cotton received by U.S. farmers during the period January through December 2023.

The Import Assessment Table in § 1205.510(b)(3) of the Order indicates the total assessment rate (\$ per kilogram) due for each Harmonized Tariff Schedule (HTS) number that is subject to assessment. In this direct final rule, AMS is amending the Import Assessment Table to revise the total assessment rates in light of the change to the supplemental assessment rate. This table must be revised each year to reflect the change to the supplemental assessment rate, and any changes to the HTS numbers and respective conversion factors.

AMS believes that these amendments are necessary to ensure that assessments collected on imported cotton and the cotton content of imported products are the same as those paid on domestically produced cotton. Accordingly, changes reflected in this rule should be adopted and implemented as soon as possible since it is required by regulation.

As described in this **Federal Register** document, the amendment to the value used to determine the Cotton Research and Promotion Program importer assessment will be updated to reflect the assessment already paid by U.S. farmers. For the reasons mentioned above, AMS finds that publishing a proposed rule and seeking public comment is unnecessary because the change is required annually by regulation in 7 CFR 1205.510.

Also, this direct-final rulemaking furthers the objectives of Executive Order 13563, which requires that the regulatory process “promote predictability and reduce uncertainty” and “identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends.”

AMS has used the direct rule rulemaking process since 2013 and has not received any adverse comments; however, if AMS receives significant adverse comments during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. AMS will then address public comments in a subsequent proposed rule and final rule based on the proposed rule.

B. Rulemaking Analyses**Executive Order 13175**

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation

¹ Results are rounded for ease of presentation. Totals may not sum due to rounding.

and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Orders 12866, 13563, and 14094

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, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 12988

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the Secretary's ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has examined the economic impact of this rule on small entities. The

purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR 121.201, a small cotton farming business as those having annual receipts of no more than \$3.25 million (North American Industry Classification System (NAICS) Code 111920) and small “Other Farm Product Raw Material Merchant Wholesalers” (cotton merchants/importers) (NAICS Code 424590) as having no more than 175 employees.

According to the NASS 2022 Agriculture Census, the number of cotton farms is 14,283. NASS also reports that the total U.S. production value for Upland production averages \$6,261,378,333 for 2021–2023. Dividing the crop value by the number of cotton farms, the average crop value is approximately \$438,380. Since \$438,380 is well below \$3.25 million and assuming a normal distribution, the majority of cotton farmers are small according to the SBA standards.

The Cotton Board estimates approximately 37,000 importers are subject to the Cotton Research and Promotion Order. According to the United States Census Bureau’s “2021 Survey of SUSB Annual Data Tables by Establishment Industry,” most importers are considered small entities as defined by the SBA (13 CFR 121.201). This rule would only affect importers of cotton and cotton-containing products and would decrease the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is \$0.014691 per kilogram of imported cotton. The amended assessment is \$0.013247, which was calculated based on the 12-month weighted average of price received by U.S. cotton farmers in 2023. Section 1205.510 of the Order, “Levy of assessments”, provides “The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States.” In addition, § 1205.510 provides that the 12-month weighted average of prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton. Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2023, producer assessments totaled \$41.1 million and

importer assessments totaled \$40.7 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2024, one could expect a decrease of assessments by approximately \$4,000,800.

Imported organic cotton and products may be exempt from assessment if eligible under § 1205.519 of the Order.

There are no Federal rules that duplicate, overlap, or conflict with this rule. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations herein. This period is deemed appropriate because an amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1205 as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

- 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118; 7 U.S.C. 7401.

- 2. In § 1205.510, paragraph (b)(2) and table 2 to paragraph (b)(3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will

be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is \$1.3247 cents per kilogram.

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

TABLE 2 TO PARAGRAPH (b)(3)—IMPORT ASSESSMENT TABLE
[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5007106010	0.2713	0.3594
5007106020	0.2713	0.3594
5007906010	0.2713	0.3594
5007906020	0.2713	0.3594
5112904000	0.1085	0.1437
5112905000	0.1085	0.1437
5112909010	0.1085	0.1437
5112909090	0.1085	0.1437
5201000500	1	1.3247
5201001200	1	1.3247
5201001400	1	1.3247
5201001800	1	1.3247
5201002200	1	1.3247
5201002400	1	1.3247
5201002800	1	1.3247
5201003400	1	1.3247
5201003800	1	1.3247
5204110000	1.0526	1.3943
5204190000	0.6316	0.8367
5204200000	1.0526	1.3943
5205111000	1	1.3247
5205112000	1	1.3247
5205121000	1	1.3247
5205122000	1	1.3247
5205131000	1	1.3247
5205132000	1	1.3247
5205141000	1	1.3247
5205142000	1	1.3247
5205151000	1	1.3247
5205152000	1	1.3247
5205210020	1.0440	1.3829
5205210090	1.0440	1.3829
5205220020	1.0440	1.3829
5205220090	1.0440	1.3829
5205230020	1.0440	1.3829
5205230090	1.0440	1.3829
5205240020	1.0440	1.3829
5205240090	1.0440	1.3829
5205260020	1.0440	1.3829
5205260090	1.0440	1.3829
5205270020	1.0440	1.3829
5205270090	1.0440	1.3829
5205280020	1.0440	1.3829
5205280090	1.0440	1.3829
5205310000	1	1.3247
5205320000	1	1.3247
5205330000	1	1.3247
5205340000	1	1.3247
5205350000	1	1.3247
5205410020	1.0440	1.3829
5205410090	1.0440	1.3829
5205420021	1.0440	1.3829
5205420029	1.0440	1.3829
5205420090	1.0440	1.3829
5205430021	1.0440	1.3829
5205430029	1.0440	1.3829
5205430090	1.0440	1.3829
5205440021	1.0440	1.3829
5205440029	1.0440	1.3829
5205440090	1.0440	1.3829
5205460021	1.0440	1.3829
5205460029	1.0440	1.3829
5205460090	1.0440	1.3829

HTS No.	Conv. factor.	Cents/kg.
5205470021	1.0440	1.3829
5205470029	1.0440	1.3829
5205470090	1.0440	1.3829
5205480020	1.0440	1.3829
5205480090	1.0440	1.3829
5206110000	0.7368	0.9760
5206120000	0.7368	0.9760
5206130000	0.7368	0.9760
5206140000	0.7368	0.9760
5206150000	0.7368	0.9760
5206210000	0.7692	1.0189
5206220000	0.7692	1.0189
5206230000	0.7692	1.0189
5206240000	0.7692	1.0189
5206250000	0.7692	1.0189
5206310000	0.7368	0.9760
5206320000	0.7368	0.9760
5206330000	0.7368	0.9760
5206340000	0.7368	0.9760
5206350000	0.7368	0.9760
5206410000	0.7692	1.0189
5206420000	0.7692	1.0189
5206430000	0.7692	1.0189
5206440000	0.7692	1.0189
5206450000	0.7692	1.0189
5207100000	0.9474	1.2550
5207900000	0.6316	0.8367
5208112020	1.0852	1.4375
5208112040	1.0852	1.4375
5208112090	1.0852	1.4375
5208114020	1.0852	1.4375
5208114040	1.0852	1.4375
5208114060	1.0852	1.4375
5208114090	1.0852	1.4375
5208116000	1.0852	1.4375
5208118020	1.0852	1.4375
5208118090	1.0852	1.4375
5208124020	1.0852	1.4375
5208124040	1.0852	1.4375
5208124090	1.0852	1.4375
5208126020	1.0852	1.4375
5208126040	1.0852	1.4375
5208126060	1.0852	1.4375
5208126090	1.0852	1.4375
5208128020	1.0852	1.4375
5208128090	1.0852	1.4375
5208130000	1.0852	1.4375
5208192020	1.0852	1.4375
5208192090	1.0852	1.4375
5208194020	1.0852	1.4375
5208194090	1.0852	1.4375
5208196020	1.0852	1.4375
5208196090	1.0852	1.4375
5208198020	1.0852	1.4375
5208198090	1.0852	1.4375
5208212020	1.0852	1.4375
5208212040	1.0852	1.4375
5208212090	1.0852	1.4375
5208214020	1.0852	1.4375
5208214040	1.0852	1.4375
5208214060	1.0852	1.4375
5208214090	1.0852	1.4375
5208216020	1.0852	1.4375
5208216090	1.0852	1.4375
5208224020	1.0852	1.4375
5208224040	1.0852	1.4375
5208224090	1.0852	1.4375
5208226020	1.0852	1.4375

HTS No.	Conv. factor.	Cents/kg.
5208226040	1.0852	1.4375
5208226060	1.0852	1.4375
5208226090	1.0852	1.4375
5208228020	1.0852	1.4375
5208228090	1.0852	1.4375
5208230000	1.0852	1.4375
5208292020	1.0852	1.4375
5208292090	1.0852	1.4375
5208294020	1.0852	1.4375
5208294090	1.0852	1.4375
5208296020	1.0852	1.4375
5208296090	1.0852	1.4375
5208298020	1.0852	1.4375
5208298090	1.0852	1.4375
5208312000	1.0852	1.4375
5208314020	1.0852	1.4375
5208314040	1.0852	1.4375
5208314090	1.0852	1.4375
5208316020	1.0852	1.4375
5208316040	1.0852	1.4375
5208316060	1.0852	1.4375
5208316090	1.0852	1.4375
5208318020	1.0852	1.4375
5208318090	1.0852	1.4375
5208321000	1.0852	1.4375
5208323020	1.0852	1.4375
5208323040	1.0852	1.4375
5208323090	1.0852	1.4375
5208324020	1.0852	1.4375
5208324040	1.0852	1.4375
5208324060	1.0852	1.4375
5208324090	1.0852	1.4375
5208325020	1.0852	1.4375
5208325090	1.0852	1.4375
5208330000	1.0852	1.4375
5208392020	1.0852	1.4375
5208392090	1.0852	1.4375
5208394020	1.0852	1.4375
5208394090	1.0852	1.4375
5208396020	1.0852	1.4375
5208396090	1.0852	1.4375
5208398020	1.0852	1.4375
5208398090	1.0852	1.4375
5208412000	1.0852	1.4375
5208414000	1.0852	1.4375
5208416000	1.0852	1.4375
5208418000	1.0852	1.4375
5208421000	1.0852	1.4375
5208423000	1.0852	1.4375
5208424000	1.0852	1.4375
5208425000	1.0852	1.4375
5208430000	1.0852	1.4375
5208492000	1.0852	1.4375
5208494010	1.0852	1.4375
5208494020	1.0852	1.4375
5208494090	1.0852	1.4375
5208496010	1.0852	1.4375
5208496020	1.0852	1.4375
5208496030	1.0852	1.4375
5208496090	1.0852	1.4375
5208498020	1.0852	1.4375
5208498090	1.0852	1.4375
5208512000	1.0852	1.4375
5208514020	1.0852	1.4375
5208514040	1.0852	1.4375
5208514090	1.0852	1.4375
5208516020	1.0852	1.4375
5208516040	1.0852	1.4375

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5208516060	1.0852	1.4375
5208516090	1.0852	1.4375
5208518020	1.0852	1.4375
5208518090	1.0852	1.4375
5208521000	1.0852	1.4375
5208523020	1.0852	1.4375
5208523035	1.0852	1.4375
5208523045	1.0852	1.4375
5208523090	1.0852	1.4375
5208524020	1.0852	1.4375
5208524035	1.0852	1.4375
5208524045	1.0852	1.4375
5208524055	1.0852	1.4375
5208524065	1.0852	1.4375
5208524090	1.0852	1.4375
5208525020	1.0852	1.4375
5208525090	1.0852	1.4375
5208591000	1.0852	1.4375
5208592015	1.0852	1.4375
5208592025	1.0852	1.4375
5208592085	1.0852	1.4375
5208592095	1.0852	1.4375
5208594020	1.0852	1.4375
5208594090	1.0852	1.4375
5208596020	1.0852	1.4375
5208596090	1.0852	1.4375
5208598020	1.0852	1.4375
5208598090	1.0852	1.4375
5209110020	1.0309	1.3656
5209110025	1.0309	1.3656
5209110035	1.0309	1.3656
5209110050	1.0309	1.3656
5209110090	1.0309	1.3656
5209120020	1.0309	1.3656
5209120040	1.0309	1.3656
5209190020	1.0309	1.3656
5209190040	1.0309	1.3656
5209190060	1.0309	1.3656
5209190090	1.0309	1.3656
5209210020	1.0309	1.3656
5209210025	1.0309	1.3656
5209210035	1.0309	1.3656
5209210050	1.0309	1.3656
5209210090	1.0309	1.3656
5209220020	1.0309	1.3656
5209220040	1.0309	1.3656
5209290020	1.0309	1.3656
5209290040	1.0309	1.3656
5209290060	1.0309	1.3656
5209290090	1.0309	1.3656
5209313000	1.0309	1.3656
5209316020	1.0309	1.3656
5209316025	1.0309	1.3656
5209316035	1.0309	1.3656
5209316050	1.0309	1.3656
5209316090	1.0309	1.3656
5209320020	1.0309	1.3656
5209320040	1.0309	1.3656
5209390020	1.0309	1.3656
5209390040	1.0309	1.3656
5209390060	1.0309	1.3656
5209390080	1.0309	1.3656
5209390090	1.0309	1.3656
5209413000	1.0309	1.3656
5209416020	1.0309	1.3656
5209416040	1.0309	1.3656
5209420020	0.9767	1.2938
5209420040	0.9767	1.2938

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5209420060	0.9767	1.2938
5209420080	0.9767	1.2938
5209430030	1.0309	1.3656
5209430050	1.0309	1.3656
5209490020	1.0309	1.3656
5209490040	1.0309	1.3656
5209490090	1.0309	1.3656
5209513000	1.0309	1.3656
5209516015	1.0852	1.4375
5209516025	1.0852	1.4375
5209516032	1.0852	1.4375
5209516035	1.0852	1.4375
5209516050	1.0852	1.4375
5209516090	1.0852	1.4375
5209520020	1.0852	1.4375
5209520040	1.0852	1.4375
5209590015	1.0852	1.4375
5209590025	1.0852	1.4375
5209590040	1.0852	1.4375
5209590060	1.0852	1.4375
5209590090	1.0852	1.4375
5210114020	0.6511	0.8625
5210114040	0.6511	0.8625
5210114090	0.6511	0.8625
5210116020	0.6511	0.8625
5210116040	0.6511	0.8625
5210116060	0.6511	0.8625
5210116090	0.6511	0.8625
5210118020	0.6511	0.8625
5210118090	0.6511	0.8625
5210191000	0.6511	0.8625
5210192020	0.6511	0.8625
5210192090	0.6511	0.8625
5210194020	0.6511	0.8625
5210194090	0.6511	0.8625
5210196020	0.6511	0.8625
5210196090	0.6511	0.8625
5210198020	0.6511	0.8625
5210198090	0.6511	0.8625
5210214020	0.6511	0.8625
5210214040	0.6511	0.8625
5210214090	0.6511	0.8625
5210216020	0.6511	0.8625
5210216040	0.6511	0.8625
5210216060	0.6511	0.8625
5210216090	0.6511	0.8625
5210218020	0.6511	0.8625
5210218090	0.6511	0.8625
5210291000	0.6511	0.8625
5210292020	0.6511	0.8625
5210292090	0.6511	0.8625
5210294020	0.6511	0.8625
5210294090	0.6511	0.8625
5210296020	0.6511	0.8625
5210296090	0.6511	0.8625
5210298020	0.6511	0.8625
5210298090	0.6511	0.8625
5210314020	0.6511	0.8625
5210314040	0.6511	0.8625
5210314090	0.6511	0.8625
5210316020	0.6511	0.8625
5210316040	0.6511	0.8625
5210316060	0.6511	0.8625
5210316090	0.6511	0.8625
5210318020	0.6511	0.8625
5210318090	0.6511	0.8625
5210320000	0.6511	0.8625
5210392020	0.6511	0.8625

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5210392090	0.6511	0.8625
5210394020	0.6511	0.8625
5210394090	0.6511	0.8625
5210396020	0.6511	0.8625
5210396090	0.6511	0.8625
5210398020	0.6511	0.8625
5210398090	0.6511	0.8625
5210414000	0.6511	0.8625
5210416000	0.6511	0.8625
5210418000	0.6511	0.8625
5210491000	0.6511	0.8625
5210492000	0.6511	0.8625
5210494010	0.6511	0.8625
5210494020	0.6511	0.8625
5210494090	0.6511	0.8625
5210496010	0.6511	0.8625
5210496020	0.6511	0.8625
5210496090	0.6511	0.8625
5210498020	0.6511	0.8625
5210498090	0.6511	0.8625
5210514020	0.6511	0.8625
5210514040	0.6511	0.8625
5210514090	0.6511	0.8625
5210516020	0.6511	0.8625
5210516040	0.6511	0.8625
5210516060	0.6511	0.8625
5210516090	0.6511	0.8625
5210518020	0.6511	0.8625
5210518090	0.6511	0.8625
5210591000	0.6511	0.8625
5210592020	0.6511	0.8625
5210592090	0.6511	0.8625
5210594020	0.6511	0.8625
5210594090	0.6511	0.8625
5210596020	0.6511	0.8625
5210596090	0.6511	0.8625
5210598020	0.6511	0.8625
5210598090	0.6511	0.8625
5211110020	0.6511	0.8625
5211110025	0.6511	0.8625
5211110035	0.6511	0.8625
5211110050	0.6511	0.8625
5211110090	0.6511	0.8625
5211120020	0.6511	0.8625
5211120040	0.6511	0.8625
5211190020	0.6511	0.8625
5211190040	0.6511	0.8625
5211190060	0.6511	0.8625
5211190090	0.6511	0.8625
5211202120	0.6511	0.8625
5211202125	0.6511	0.8625
5211202135	0.6511	0.8625
5211202150	0.6511	0.8625
5211202190	0.6511	0.8625
5211202220	0.6511	0.8625
5211202240	0.6511	0.8625
5211202920	0.6511	0.8625
5211202940	0.6511	0.8625
5211202960	0.6511	0.8625
5211202990	0.6511	0.8625
5211310020	0.6511	0.8625
5211310025	0.6511	0.8625
5211310035	0.6511	0.8625
5211310050	0.6511	0.8625
5211310090	0.6511	0.8625
5211320020	0.6511	0.8625
5211320040	0.6511	0.8625
5211390020	0.6511	0.8625

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5211390040	0.6511	0.8625
5211390060	0.6511	0.8625
5211390090	0.6511	0.8625
5211410020	0.6511	0.8625
5211410040	0.6511	0.8625
5211420020	0.7054	0.9344
5211420040	0.7054	0.9344
5211420060	0.6511	0.8625
5211420080	0.6511	0.8625
5211430030	0.6511	0.8625
5211430050	0.6511	0.8625
5211490020	0.6511	0.8625
5211490090	0.6511	0.8625
5211510020	0.6511	0.8625
5211510030	0.6511	0.8625
5211510050	0.6511	0.8625
5211510090	0.6511	0.8625
5211520020	0.6511	0.8625
5211520040	0.6511	0.8625
5211590015	0.6511	0.8625
5211590025	0.6511	0.8625
5211590040	0.6511	0.8625
5211590060	0.6511	0.8625
5211590090	0.6511	0.8625
5212111010	0.5845	0.7743
5212111020	0.6231	0.8254
5212116010	0.8681	1.1499
5212116020	0.8681	1.1499
5212116030	0.8681	1.1499
5212116040	0.8681	1.1499
5212116050	0.8681	1.1499
5212116060	0.8681	1.1499
5212116070	0.8681	1.1499
5212116080	0.8681	1.1499
5212116090	0.8681	1.1499
5212121010	0.5845	0.7743
5212121020	0.6231	0.8254
5212126010	0.8681	1.1499
5212126020	0.8681	1.1499
5212126030	0.8681	1.1499
5212126040	0.8681	1.1499
5212126050	0.8681	1.1499
5212126060	0.8681	1.1499
5212126070	0.8681	1.1499
5212126080	0.8681	1.1499
5212126090	0.8681	1.1499
5212131010	0.5845	0.7743
5212131020	0.6231	0.8254
5212136010	0.8681	1.1499
5212136020	0.8681	1.1499
5212136030	0.8681	1.1499
5212136040	0.8681	1.1499
5212136050	0.8681	1.1499
5212136060	0.8681	1.1499
5212136070	0.8681	1.1499
5212136080	0.8681	1.1499
5212136090	0.8681	1.1499
5212141010	0.5845	0.7743
5212141020	0.6231	0.8254
5212146010	0.8681	1.1499
5212146020	0.8681	1.1499
5212146030	0.8681	1.1499
5212146090	0.8681	1.1499
5212151010	0.5845	0.7743
5212151020	0.6231	0.8254
5212156010	0.8681	1.1499
5212156020	0.8681	1.1499
5212156030	0.8681	1.1499

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5212156040	0.8681	1.1499
5212156050	0.8681	1.1499
5212156060	0.8681	1.1499
5212156070	0.8681	1.1499
5212156080	0.8681	1.1499
5212156090	0.8681	1.1499
5212211010	0.5845	0.7743
5212211020	0.6231	0.8254
5212216010	0.8681	1.1499
5212216020	0.8681	1.1499
5212216030	0.8681	1.1499
5212216040	0.8681	1.1499
5212216050	0.8681	1.1499
5212216060	0.8681	1.1499
5212216090	0.8681	1.1499
5212221010	0.5845	0.7743
5212221020	0.6231	0.8254
5212226010	0.8681	1.1499
5212226020	0.8681	1.1499
5212226030	0.8681	1.1499
5212226040	0.8681	1.1499
5212226050	0.8681	1.1499
5212226060	0.8681	1.1499
5212226090	0.8681	1.1499
5212231010	0.5845	0.7743
5212231020	0.6231	0.8254
5212236010	0.8681	1.1499
5212236020	0.8681	1.1499
5212236030	0.8681	1.1499
5212236040	0.8681	1.1499
5212236050	0.8681	1.1499
5212236060	0.8681	1.1499
5212236090	0.8681	1.1499
5212241010	0.5845	0.7743
5212241020	0.6231	0.8254
5212246010	0.8681	1.1499
5212246020	0.7054	0.9344
5212246030	0.8681	1.1499
5212246040	0.8681	1.1499
5212246090	0.8681	1.1499
5212251010	0.5845	0.7743
5212251020	0.6231	0.8254
5212256010	0.8681	1.1499
5212256020	0.8681	1.1499
5212256030	0.8681	1.1499
5212256040	0.8681	1.1499
5212256050	0.8681	1.1499
5212256060	0.8681	1.1499
5212256090	0.8681	1.1499
5309213005	0.5426	0.7188
5309213010	0.5426	0.7188
5309213015	0.5426	0.7188
5309213020	0.5426	0.7188
5309214010	0.2713	0.3594
5309214090	0.2713	0.3594
5309293005	0.5426	0.7188
5309293010	0.5426	0.7188
5309293015	0.5426	0.7188
5309293020	0.5426	0.7188
5309294010	0.2713	0.3594
5309294090	0.2713	0.3594
5311003005	0.5426	0.7188
5311003010	0.5426	0.7188
5311003015	0.5426	0.7188
5311003020	0.5426	0.7188
5311004010	0.8681	1.1499
5311004020	0.8681	1.1499
5407810010	0.5426	0.7188

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5407810020	0.5426	0.7188
5407810030	0.5426	0.7188
5407810040	0.5426	0.7188
5407810090	0.5426	0.7188
5407820010	0.5426	0.7188
5407820020	0.5426	0.7188
5407820030	0.5426	0.7188
5407820040	0.5426	0.7188
5407820090	0.5426	0.7188
5407830010	0.5426	0.7188
5407830020	0.5426	0.7188
5407830030	0.5426	0.7188
5407830040	0.5426	0.7188
5407830090	0.5426	0.7188
5407840010	0.5426	0.7188
5407840020	0.5426	0.7188
5407840030	0.5426	0.7188
5407840040	0.5426	0.7188
5407840090	0.5426	0.7188
5509210000	0.1053	0.1395
5509220010	0.1053	0.1395
5509220090	0.1053	0.1395
5509530030	0.3158	0.4183
5509530060	0.3158	0.4183
5509620000	0.5263	0.6972
5509920000	0.5263	0.6972
5510300000	0.3684	0.4880
5511200000	0.3158	0.4183
5512110010	0.1085	0.1437
5512110022	0.1085	0.1437
5512110027	0.1085	0.1437
5512110030	0.1085	0.1437
5512110040	0.1085	0.1437
5512110050	0.1085	0.1437
5512110060	0.1085	0.1437
5512110070	0.1085	0.1437
5512110090	0.1085	0.1437
5512190005	0.1085	0.1437
5512190010	0.1085	0.1437
5512190015	0.1085	0.1437
5512190022	0.1085	0.1437
5512190027	0.1085	0.1437
5512190030	0.1085	0.1437
5512190035	0.1085	0.1437
5512190040	0.1085	0.1437
5512190045	0.1085	0.1437
5512190050	0.1085	0.1437
5512190090	0.1085	0.1437
5512210010	0.0326	0.0432
5512210020	0.0326	0.0432
5512210030	0.0326	0.0432
5512210040	0.0326	0.0432
5512210060	0.0326	0.0432
5512210070	0.0326	0.0432
5512210090	0.0326	0.0432
5512290010	0.2170	0.2875
5512910010	0.0543	0.0719
5512990005	0.0543	0.0719
5512990010	0.0543	0.0719
5512990015	0.0543	0.0719
5512990020	0.0543	0.0719
5512990025	0.0543	0.0719
5512990030	0.0543	0.0719
5512990035	0.0543	0.0719
5512990040	0.0543	0.0719
5512990045	0.0543	0.0719
5512990090	0.0543	0.0719
5513110020	0.3581	0.4744

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5513110040	0.3581	0.4744
5513110060	0.3581	0.4744
5513110090	0.3581	0.4744
5513120000	0.3581	0.4744
5513130020	0.3581	0.4744
5513130040	0.3581	0.4744
5513130090	0.3581	0.4744
5513190010	0.3581	0.4744
5513190020	0.3581	0.4744
5513190030	0.3581	0.4744
5513190040	0.3581	0.4744
5513190050	0.3581	0.4744
5513190060	0.3581	0.4744
5513190090	0.3581	0.4744
5513210020	0.3581	0.4744
5513210040	0.3581	0.4744
5513210060	0.3581	0.4744
5513210090	0.3581	0.4744
5513230121	0.3581	0.4744
5513230141	0.3581	0.4744
5513230191	0.3581	0.4744
5513290010	0.3581	0.4744
5513290020	0.3581	0.4744
5513290030	0.3581	0.4744
5513290040	0.3581	0.4744
5513290050	0.3581	0.4744
5513290060	0.3581	0.4744
5513290090	0.3581	0.4744
5513310000	0.3581	0.4744
5513390111	0.3581	0.4744
5513390115	0.3581	0.4744
5513390191	0.3581	0.4744
5513410020	0.3581	0.4744
5513410040	0.3581	0.4744
5513410060	0.3581	0.4744
5513410090	0.3581	0.4744
5513491000	0.3581	0.4744
5513492020	0.3581	0.4744
5513492040	0.3581	0.4744
5513492090	0.3581	0.4744
5513499010	0.3581	0.4744
5513499020	0.3581	0.4744
5513499030	0.3581	0.4744
5513499040	0.3581	0.4744
5513499050	0.3581	0.4744
5513499060	0.3581	0.4744
5513499090	0.3581	0.4744
5514110020	0.4341	0.5750
5514110030	0.4341	0.5750
5514110050	0.4341	0.5750
5514110090	0.4341	0.5750
5514120020	0.4341	0.5750
5514120040	0.4341	0.5750
5514191020	0.4341	0.5750
5514191040	0.4341	0.5750
5514191090	0.4341	0.5750
5514199010	0.4341	0.5750
5514199020	0.4341	0.5750
5514199030	0.4341	0.5750
5514199040	0.4341	0.5750
5514199090	0.4341	0.5750
5514210020	0.4341	0.5750
5514210030	0.4341	0.5750
5514210050	0.4341	0.5750
5514210090	0.4341	0.5750
5514220020	0.4341	0.5750
5514220040	0.4341	0.5750
5514230020	0.4341	0.5750

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5514230040	0.4341	0.5750
5514230090	0.4341	0.5750
5514290010	0.4341	0.5750
5514290020	0.4341	0.5750
5514290030	0.4341	0.5750
5514290040	0.4341	0.5750
5514290090	0.4341	0.5750
5514303100	0.4341	0.5750
5514303210	0.4341	0.5750
5514303215	0.4341	0.5750
5514303280	0.4341	0.5750
5514303310	0.4341	0.5750
5514303390	0.4341	0.5750
5514303910	0.4341	0.5750
5514303920	0.4341	0.5750
5514303990	0.4341	0.5750
5514410020	0.4341	0.5750
5514410030	0.4341	0.5750
5514410050	0.4341	0.5750
5514410090	0.4341	0.5750
5514420020	0.4341	0.5750
5514420040	0.4341	0.5750
5514430020	0.4341	0.5750
5514430040	0.4341	0.5750
5514430090	0.4341	0.5750
5514490010	0.4341	0.5750
5514490020	0.4341	0.5750
5514490030	0.4341	0.5750
5514490040	0.4341	0.5750
5514490090	0.4341	0.5750
5515110005	0.1085	0.1437
5515110010	0.1085	0.1437
5515110015	0.1085	0.1437
5515110020	0.1085	0.1437
5515110025	0.1085	0.1437
5515110030	0.1085	0.1437
5515110035	0.1085	0.1437
5515110040	0.1085	0.1437
5515110045	0.1085	0.1437
5515110090	0.1085	0.1437
5515120010	0.1085	0.1437
5515120022	0.1085	0.1437
5515120027	0.1085	0.1437
5515120030	0.1085	0.1437
5515120040	0.1085	0.1437
5515120090	0.1085	0.1437
5515190005	0.1085	0.1437
5515190010	0.1085	0.1437
5515190015	0.1085	0.1437
5515190020	0.1085	0.1437
5515190025	0.1085	0.1437
5515190030	0.1085	0.1437
5515190035	0.1085	0.1437
5515190040	0.1085	0.1437
5515190045	0.1085	0.1437
5515190090	0.1085	0.1437
5515290005	0.1085	0.1437
5515290010	0.1085	0.1437
5515290015	0.1085	0.1437
5515290020	0.1085	0.1437
5515290025	0.1085	0.1437
5515290030	0.1085	0.1437
5515290035	0.1085	0.1437
5515290040	0.1085	0.1437
5515290045	0.1085	0.1437
5515290090	0.1085	0.1437
5515999005	0.1085	0.1437
5515999010	0.1085	0.1437

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5515999015	0.1085	0.1437
5515999020	0.1085	0.1437
5515999025	0.1085	0.1437
5515999030	0.1085	0.1437
5515999035	0.1085	0.1437
5515999040	0.1085	0.1437
5515999045	0.1085	0.1437
5515999090	0.1085	0.1437
5516210010	0.1085	0.1437
5516210020	0.1085	0.1437
5516210030	0.1085	0.1437
5516210040	0.1085	0.1437
5516210090	0.1085	0.1437
5516220010	0.1085	0.1437
5516220020	0.1085	0.1437
5516220030	0.1085	0.1437
5516220040	0.1085	0.1437
5516220090	0.1085	0.1437
5516230010	0.1085	0.1437
5516230020	0.1085	0.1437
5516230030	0.1085	0.1437
5516230040	0.1085	0.1437
5516230090	0.1085	0.1437
5516240010	0.1085	0.1437
5516240020	0.1085	0.1437
5516240030	0.1085	0.1437
5516240040	0.1085	0.1437
5516240085	0.1085	0.1437
5516240095	0.1085	0.1437
5516410010	0.3798	0.5031
5516410022	0.3798	0.5031
5516410027	0.3798	0.5031
5516410030	0.3798	0.5031
5516410040	0.3798	0.5031
5516410050	0.3798	0.5031
5516410060	0.3798	0.5031
5516410070	0.3798	0.5031
5516410090	0.3798	0.5031
5516420010	0.3798	0.5031
5516420022	0.3798	0.5031
5516420027	0.3798	0.5031
5516420030	0.3798	0.5031
5516420040	0.3798	0.5031
5516420050	0.3798	0.5031
5516420060	0.3798	0.5031
5516420070	0.3798	0.5031
5516420090	0.3798	0.5031
5516430010	0.2170	0.2875
5516430015	0.3798	0.5031
5516430020	0.3798	0.5031
5516430035	0.3798	0.5031
5516430080	0.3798	0.5031
5516440010	0.3798	0.5031
5516440022	0.3798	0.5031
5516440027	0.3798	0.5031
5516440030	0.3798	0.5031
5516440040	0.3798	0.5031
5516440050	0.3798	0.5031
5516440060	0.3798	0.5031
5516440070	0.3798	0.5031
5516440090	0.3798	0.5031
5516910010	0.0543	0.0719
5516910020	0.0543	0.0719
5516910030	0.0543	0.0719
5516910040	0.0543	0.0719
5516910050	0.0543	0.0719
5516910060	0.0543	0.0719
5516910070	0.0543	0.0719

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5516910090	0.0543	0.0719
5516920010	0.0543	0.0719
5516920020	0.0543	0.0719
5516920030	0.0543	0.0719
5516920040	0.0543	0.0719
5516920050	0.0543	0.0719
5516920060	0.0543	0.0719
5516920070	0.0543	0.0719
5516920090	0.0543	0.0719
5516930010	0.0543	0.0719
5516930020	0.0543	0.0719
5516930090	0.0543	0.0719
5516940010	0.0543	0.0719
5516940020	0.0543	0.0719
5516940030	0.0543	0.0719
5516940040	0.0543	0.0719
5516940050	0.0543	0.0719
5516940060	0.0543	0.0719
5516940070	0.0543	0.0719
5516940090	0.0543	0.0719
5601210010	0.9767	1.2938
5601210090	0.9767	1.2938
5601220010	0.1085	0.1437
5601220050	0.1085	0.1437
5601220091	0.1085	0.1437
5601300000	0.3256	0.4313
5602101000	0.0543	0.0719
5602109090	0.4341	0.5750
5602290000	0.4341	0.5750
5602909000	0.3256	0.4313
5603143000	0.2713	0.3594
5603910010	0.0217	0.0287
5603910090	0.0651	0.0862
5603920010	0.0217	0.0287
5603920070	0.0651	0.0862
5603920095	0.0651	0.0862
5603930010	0.0217	0.0287
5603930090	0.0651	0.0862
5603941090	0.3256	0.4313
5603943000	0.1628	0.2157
5603949010	0.0326	0.0432
5604110000	0.2632	0.3486
5604909000	0.2105	0.2788
5605009000	0.1579	0.2092
5606000010	0.1263	0.1673
5606000090	0.1263	0.1673
5607502500	0.1684	0.2231
5607909000	0.8421	1.1155
5608901000	1.0526	1.3943
5608902300	0.6316	0.8367
5608902700	0.6316	0.8367
5608903000	0.3158	0.4183
5609001000	0.8421	1.1155
5609004000	0.2105	0.2788
5701101300	0.0526	0.0697
5701101600	0.0526	0.0697
5701104000	0.0526	0.0697
5701109000	0.0526	0.0697
5701901010	1	1.3247
5701901020	1	1.3247
5701901030	0.0526	0.0697
5701901090	0.0526	0.0697
5701902010	0.9474	1.2550
5701902020	0.9474	1.2550
5701902030	0.0526	0.0697
5701902090	0.0526	0.0697
5702101000	0.0447	0.0592
5702109010	0.0447	0.0592

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5702109020	0.8500	1.1260
5702109030	0.0447	0.0592
5702109090	0.0447	0.0592
5702201000	0.0447	0.0592
5702311000	0.0447	0.0592
5702312000	0.0895	0.1186
5702322000	0.0895	0.1186
5702391000	0.0895	0.1186
5702392010	0.8053	1.0667
5702392090	0.0447	0.0592
5702411000	0.0447	0.0592
5702412000	0.0447	0.0592
5702421000	0.0895	0.1186
5702422020	0.0895	0.1186
5702422080	0.0895	0.1186
5702491020	0.8947	1.1852
5702491080	0.8947	1.1852
5702492000	0.0895	0.1186
5702502000	0.0895	0.1186
5702504000	0.0447	0.0592
5702505200	0.0895	0.1186
5702505600	0.8500	1.1260
5702912000	0.0447	0.0592
5702913000	0.0447	0.0592
5702914000	0.0447	0.0592
5702921000	0.0447	0.0592
5702929000	0.0447	0.0592
5702990500	0.8947	1.1852
5702991500	0.8947	1.1852
5703291000	0.0452	0.0599
5703292010	0.0452	0.0599
5703391000	0.0452	0.0599
5703900000	0.3615	0.4789
5705001000	0.0452	0.0599
5705002005	0.0452	0.0599
5705002015	0.0452	0.0599
5705002020	0.7682	1.0176
5705002030	0.0452	0.0599
5705002090	0.1808	0.2395
5801210000	0.9767	1.2938
5801221000	0.9767	1.2938
5801229000	0.9767	1.2938
5801230000	0.9767	1.2938
5801260010	0.7596	1.0062
5801260020	0.7596	1.0062
5801271000	0.9767	1.2938
5801275010	1.0852	1.4375
5801275020	0.9767	1.2938
5801310000	0.2170	0.2875
5801320000	0.2170	0.2875
5801330000	0.2170	0.2875
5801360010	0.2170	0.2875
5801360020	0.2170	0.2875
5802101000	1.0309	1.3656
5802109000	1.0309	1.3656
5802200020	0.1085	0.1437
5802200090	0.3256	0.4313
5802300030	0.4341	0.5750
5802300090	0.1085	0.1437
5803001000	1.0852	1.4375
5803002000	0.8681	1.1499
5803003000	0.8681	1.1499
5803005000	0.3256	0.4313
5804101000	0.4341	0.5750
5804109090	0.2193	0.2905
5804291000	0.8772	1.1620
5804300020	0.3256	0.4313
5805001000	0.1085	0.1437

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5805003000	1.0852	1.4375
5806101000	0.8681	1.1499
5806103090	0.2170	0.2875
5806200010	0.2577	0.3414
5806200090	0.2577	0.3414
5806310000	0.8681	1.1499
5806393080	0.2170	0.2875
5806400000	0.0814	0.1078
5807100510	0.8681	1.1499
5807102010	0.8681	1.1499
5807900510	0.8681	1.1499
5807902010	0.8681	1.1499
5808104000	0.2170	0.2875
5808107000	0.2170	0.2875
5808900010	0.4341	0.5750
5810100000	0.3256	0.4313
5810910010	0.7596	1.0062
5810910020	0.7596	1.0062
5810921000	0.2170	0.2875
5810929030	0.2170	0.2875
5810929050	0.2170	0.2875
5810929080	0.2170	0.2875
5811002000	0.8681	1.1499
5901102000	0.5643	0.7475
5901904000	0.8139	1.0781
5903101000	0.4341	0.5750
5903103000	0.1085	0.1437
5903201000	0.4341	0.5750
5903203090	0.1085	0.1437
5903901000	0.4341	0.5750
5903903090	0.1085	0.1437
5904901000	0.0326	0.0432
5905001000	0.1085	0.1437
5905009000	0.1085	0.1437
5906100000	0.4341	0.5750
5906911000	0.4341	0.5750
5906913000	0.1085	0.1437
5906991000	0.4341	0.5750
5906993000	0.1085	0.1437
5907002500	0.3798	0.5031
5907003500	0.3798	0.5031
5907008090	0.3798	0.5031
5908000000	0.7813	1.0350
5909001000	0.6837	0.9057
5909002000	0.4883	0.6468
5910001010	0.3798	0.5031
5910001020	0.3798	0.5031
5910001030	0.3798	0.5031
5910001060	0.3798	0.5031
5910001070	0.3798	0.5031
5910001090	0.6837	0.9057
5910009000	0.5697	0.7547
5911101000	0.1736	0.2300
5911102000	0.0434	0.0575
5911201000	0.4341	0.5750
5911310010	0.4341	0.5750
5911310020	0.4341	0.5750
5911310030	0.4341	0.5750
5911310080	0.4341	0.5750
5911320010	0.4341	0.5750
5911320020	0.4341	0.5750
5911320030	0.4341	0.5750
5911320080	0.4341	0.5750
5911400100	0.5426	0.7188
5911900040	0.3158	0.4183
5911900080	0.2105	0.2788
6001106000	0.1096	0.1452
6001210000	0.9868	1.3072

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6001220000	0.1096	0.1452
6001290000	0.1096	0.1452
6001910010	0.8772	1.1620
6001910020	0.8772	1.1620
6001920010	0.0548	0.0726
6001920020	0.0548	0.0726
6001920030	0.0548	0.0726
6001920040	0.0548	0.0726
6001999000	0.1096	0.1452
6002404000	0.7401	0.9804
6002408020	0.1974	0.2615
6002408080	0.1974	0.2615
6002904000	0.7895	1.0458
6002908020	0.1974	0.2615
6002908080	0.1974	0.2615
6003201000	0.8772	1.1620
6003203000	0.8772	1.1620
6003301000	0.1096	0.1452
6003306000	0.1096	0.1452
6003401000	0.1096	0.1452
6003406000	0.1096	0.1452
6003901000	0.1096	0.1452
6003909000	0.1096	0.1452
6004100010	0.2961	0.3922
6004100025	0.2961	0.3922
6004100085	0.2961	0.3922
6004902010	0.2961	0.3922
6004902025	0.2961	0.3922
6004902085	0.2961	0.3922
6004909000	0.2961	0.3922
6005210000	0.7127	0.9441
6005220000	0.7127	0.9441
6005230000	0.7127	0.9441
6005240000	0.7127	0.9441
6005360010	0.1096	0.1452
6005360080	0.1096	0.1452
6005370010	0.1096	0.1452
6005370080	0.1096	0.1452
6005380010	0.1096	0.1452
6005380080	0.1096	0.1452
6005390010	0.1096	0.1452
6005390080	0.1096	0.1452
6005410010	0.1096	0.1452
6005410080	0.1096	0.1452
6005420010	0.1096	0.1452
6005420080	0.1096	0.1452
6005430010	0.1096	0.1452
6005430080	0.1096	0.1452
6005440010	0.1096	0.1452
6005440080	0.1096	0.1452
6005909000	0.1096	0.1452
6006211000	1.0965	1.4525
6006219020	0.7675	1.0167
6006219080	0.7675	1.0167
6006221000	1.0965	1.4525
6006229020	0.7675	1.0167
6006229080	0.7675	1.0167
6006231000	1.0965	1.4525
6006239020	0.7675	1.0167
6006239080	0.7675	1.0167
6006241000	1.0965	1.4525
6006249020	0.7675	1.0167
6006249080	0.7675	1.0167
6006310020	0.3289	0.4357
6006310040	0.3289	0.4357
6006310060	0.3289	0.4357
6006310080	0.3289	0.4357
6006320020	0.3289	0.4357

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6006320040	0.3289	0.4357
6006320060	0.3289	0.4357
6006320080	0.3289	0.4357
6006330020	0.3289	0.4357
6006330040	0.3289	0.4357
6006330060	0.3289	0.4357
6006330080	0.3289	0.4357
6006340020	0.3289	0.4357
6006340040	0.3289	0.4357
6006340060	0.3289	0.4357
6006340080	0.3289	0.4357
6006410025	0.3289	0.4357
6006410085	0.3289	0.4357
6006420025	0.3289	0.4357
6006420085	0.3289	0.4357
6006430025	0.3289	0.4357
6006430085	0.3289	0.4357
6006440025	0.3289	0.4357
6006440085	0.3289	0.4357
6006909000	0.1096	0.1452
6101200010	1.0200	1.3511
6101200020	1.0200	1.3511
6101301000	0.2072	0.2745
6101900500	0.1912	0.2533
6101909010	0.5737	0.7600
6101909030	0.5100	0.6756
6101909060	0.2550	0.3378
6102100000	0.2550	0.3378
6102200010	0.9562	1.2666
6102200020	0.9562	1.2666
6102300500	0.1785	0.2365
6102909005	0.5737	0.7600
6102909015	0.4462	0.5911
6102909030	0.2550	0.3378
6103101000	0.0637	0.0844
6103104000	0.1218	0.1613
6103105000	0.1218	0.1613
6103106010	0.8528	1.1297
6103106015	0.8528	1.1297
6103106030	0.8528	1.1297
6103109010	0.5482	0.7262
6103109020	0.5482	0.7262
6103109030	0.5482	0.7262
6103109040	0.1218	0.1613
6103109050	0.1218	0.1613
6103109080	0.1827	0.2420
6103220040	0.7919	1.0490
6103220050	0.7919	1.0490
6103220080	0.9747	1.2911
6103230040	0.2437	0.3228
6103230045	0.2437	0.3228
6103230070	0.1218	0.1613
6103230075	0.3655	0.4842
6103292054	0.1218	0.1613
6103320000	0.8722	1.1554
6103398010	0.7476	0.9903
6103398030	0.3738	0.4952
6103398060	0.2492	0.3301
6103411010	0.3576	0.4737
6103411020	0.3576	0.4737
6103412000	0.3576	0.4737
6103421020	0.8343	1.1052
6103421035	0.8343	1.1052
6103421040	0.8343	1.1052
6103421050	0.8343	1.1052
6103421065	0.8343	1.1052
6103421070	0.8343	1.1052
6103422010	0.8343	1.1052

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6103422015	0.8343	1.1052
6103422025	0.8343	1.1052
6103431520	0.2384	0.3158
6103431535	0.2384	0.3158
6103431540	0.2384	0.3158
6103431550	0.2384	0.3158
6103431565	0.2384	0.3158
6103431570	0.2384	0.3158
6103432020	0.2384	0.3158
6103432025	0.2384	0.3158
6103491020	0.2437	0.3228
6103491060	0.2437	0.3228
6103492000	0.2437	0.3228
6103498010	0.5482	0.7262
6103498014	0.3655	0.4842
6103498024	0.2437	0.3228
6103498026	0.2437	0.3228
6103498034	0.5482	0.7262
6103498038	0.3655	0.4842
6103498060	0.2437	0.3228
6104196010	0.8722	1.1554
6104196020	0.8722	1.1554
6104196030	0.8722	1.1554
6104196040	0.8722	1.1554
6104198010	0.5607	0.7427
6104198020	0.5607	0.7427
6104198030	0.5607	0.7427
6104198040	0.5607	0.7427
6104198060	0.3738	0.4952
6104198090	0.2492	0.3301
6104220010	0.8528	1.1297
6104220030	0.8528	1.1297
6104220040	0.8528	1.1297
6104220050	0.8528	1.1297
6104220060	0.8528	1.1297
6104220080	0.7310	0.9683
6104220090	0.8528	1.1297
6104230020	0.1218	0.1613
6104230026	0.1218	0.1613
6104230030	0.1218	0.1613
6104230032	0.1827	0.2420
6104230034	0.1827	0.2420
6104230036	0.1827	0.2420
6104291010	0.1218	0.1613
6104291020	0.1218	0.1613
6104291050	0.1827	0.2420
6104320000	0.8722	1.1554
6104392010	0.5607	0.7427
6104392030	0.3738	0.4952
6104392090	0.2492	0.3301
6104420010	0.8528	1.1297
6104420020	0.8528	1.1297
6104499010	0.5482	0.7262
6104499030	0.3655	0.4842
6104499060	0.2437	0.3228
6104520010	0.8822	1.1686
6104520020	0.8822	1.1686
6104598010	0.5672	0.7513
6104598030	0.3781	0.5009
6104598090	0.2521	0.3339
6104610010	0.2384	0.3158
6104610020	0.2384	0.3158
6104610030	0.2384	0.3158
6104621010	0.7509	0.9947
6104621020	0.8343	1.1052
6104621030	0.8343	1.1052
6104622006	0.7151	0.9473
6104622011	0.8343	1.1052

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6104622016	0.7151	0.9473
6104622021	0.8343	1.1052
6104622026	0.7151	0.9473
6104622028	0.8343	1.1052
6104622030	0.8343	1.1052
6104622050	0.8343	1.1052
6104622060	0.8343	1.1052
6104631020	0.2384	0.3158
6104631030	0.2384	0.3158
6104632006	0.8343	1.1052
6104632011	0.8343	1.1052
6104632016	0.7151	0.9473
6104632021	0.8343	1.1052
6104632026	0.3576	0.4737
6104632028	0.3576	0.4737
6104632030	0.3576	0.4737
6104632050	0.7151	0.9473
6104632060	0.3576	0.4737
6104691000	0.3655	0.4842
6104692030	0.3655	0.4842
6104692060	0.3655	0.4842
6104698010	0.5482	0.7262
6104698014	0.3655	0.4842
6104698020	0.2437	0.3228
6104698022	0.5482	0.7262
6104698026	0.3655	0.4842
6104698038	0.2437	0.3228
6104698040	0.2437	0.3228
6105100010	0.9332	1.2362
6105100020	0.9332	1.2362
6105100030	0.9332	1.2362
6105202010	0.2916	0.3863
6105202020	0.2916	0.3863
6105202030	0.2916	0.3863
6105908010	0.5249	0.6953
6105908030	0.3499	0.4635
6105908060	0.2333	0.3090
6106100010	0.9332	1.2362
6106100020	0.9332	1.2362
6106100030	0.9332	1.2362
6106202010	0.2916	0.3863
6106202020	0.4666	0.6181
6106202030	0.2916	0.3863
6106901500	0.0583	0.0772
6106902510	0.5249	0.6953
6106902530	0.3499	0.4635
6106902550	0.2916	0.3863
6106903010	0.5249	0.6953
6106903030	0.3499	0.4635
6106903040	0.2916	0.3863
6107110010	1.0727	1.4210
6107110020	1.0727	1.4210
6107120010	0.4767	0.6315
6107120020	0.4767	0.6315
6107191000	0.1192	0.1579
6107210010	0.8343	1.1052
6107210020	0.7151	0.9473
6107220010	0.3576	0.4737
6107220015	0.1192	0.1579
6107220025	0.2384	0.3158
6107299000	0.1788	0.2368
6107910030	1.1918	1.5787
6107910040	1.1918	1.5787
6107910090	0.9535	1.2631
6107991030	0.3576	0.4737
6107991040	0.3576	0.4737
6107991090	0.3576	0.4737
6107999000	0.1192	0.1579

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6108199010	1.0611	1.4056
6108199030	0.2358	0.3124
6108210010	1.1790	1.5618
6108210020	1.1790	1.5618
6108299000	0.3537	0.4685
6108310010	1.0611	1.4056
6108310020	1.0611	1.4056
6108320010	0.2358	0.3124
6108320015	0.2358	0.3124
6108320025	0.2358	0.3124
6108398000	0.3537	0.4685
6108910005	1.1790	1.5618
6108910015	1.1790	1.5618
6108910025	1.1790	1.5618
6108910030	1.1790	1.5618
6108910040	1.1790	1.5618
6108920005	0.2358	0.3124
6108920015	0.2358	0.3124
6108920025	0.2358	0.3124
6108920030	0.2358	0.3124
6108920040	0.2358	0.3124
6108999000	0.3537	0.4685
6109100004	1.0022	1.3276
6109100007	1.0022	1.3276
6109100011	1.0022	1.3276
6109100012	1.0022	1.3276
6109100014	1.0022	1.3276
6109100018	1.0022	1.3276
6109100023	1.0022	1.3276
6109100027	1.0022	1.3276
6109100037	1.0022	1.3276
6109100040	1.0022	1.3276
6109100045	1.0022	1.3276
6109100060	1.0022	1.3276
6109100065	1.0022	1.3276
6109100070	1.0022	1.3276
6109901007	0.2948	0.3905
6109901009	0.2948	0.3905
6109901013	0.2948	0.3905
6109901025	0.2948	0.3905
6109901047	0.2948	0.3905
6109901049	0.2948	0.3905
6109901050	0.2948	0.3905
6109901060	0.2948	0.3905
6109901065	0.2948	0.3905
6109901070	0.2948	0.3905
6109901075	0.2948	0.3905
6109901090	0.2948	0.3905
6109908010	0.3499	0.4635
6109908030	0.2333	0.3090
6110201010	0.7476	0.9903
6110201020	0.7476	0.9903
6110201022	0.7476	0.9903
6110201024	0.7476	0.9903
6110201026	0.7476	0.9903
6110201029	0.7476	0.9903
6110201031	0.7476	0.9903
6110201033	0.7476	0.9903
6110202005	1.1214	1.4855
6110202010	1.1214	1.4855
6110202015	1.1214	1.4855
6110202020	1.1214	1.4855
6110202025	1.1214	1.4855
6110202030	1.1214	1.4855
6110202035	1.1214	1.4855
6110202041	1.0965	1.4525
6110202044	1.0965	1.4525
6110202046	1.0965	1.4525

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6110202049	1.0965	1.4525
6110202067	1.0965	1.4525
6110202069	1.0965	1.4525
6110202077	1.0965	1.4525
6110202079	1.0965	1.4525
6110909010	0.5607	0.7427
6110909012	0.1246	0.1651
6110909014	0.3738	0.4952
6110909023	0.2492	0.3301
6110909028	0.5607	0.7427
6110909026	0.1869	0.2476
6110909030	0.3738	0.4952
6110909041	0.2492	0.3301
6110909044	0.5607	0.7427
6110909046	0.5607	0.7427
6110909052	0.3738	0.4952
6110909054	0.3738	0.4952
6110909064	0.2492	0.3301
6110909066	0.2492	0.3301
6110909067	0.5607	0.7427
6110909069	0.5607	0.7427
6110909071	0.5607	0.7427
6110909073	0.5607	0.7427
6110909079	0.3738	0.4952
6110909080	0.3738	0.4952
6110909081	0.3738	0.4952
6110909082	0.3738	0.4952
6110909088	0.2492	0.3301
6110909090	0.2492	0.3301
6111201000	1.1918	1.5787
6111202000	1.1918	1.5787
6111203000	0.9535	1.2631
6111204000	0.9535	1.2631
6111205000	0.9535	1.2631
6111206010	0.9535	1.2631
6111206020	0.9535	1.2631
6111206030	0.9535	1.2631
6111206050	0.9535	1.2631
6111206070	0.9535	1.2631
6111301000	0.2384	0.3158
6111302000	0.2384	0.3158
6111303000	0.2384	0.3158
6111304000	0.2384	0.3158
6111305010	0.2384	0.3158
6111305015	0.2384	0.3158
6111305020	0.2384	0.3158
6111305030	0.2384	0.3158
6111305050	0.2384	0.3158
6111305070	0.2384	0.3158
6111901000	0.2384	0.3158
6111902000	0.2384	0.3158
6111903000	0.2384	0.3158
6111904000	0.2384	0.3158
6111905010	0.2384	0.3158
6111905020	0.2384	0.3158
6111905030	0.2384	0.3158
6111905050	0.2384	0.3158
6111905070	0.2384	0.3158
6112110010	0.9535	1.2631
6112110020	0.9535	1.2631
6112110030	0.9535	1.2631
6112110040	0.9535	1.2631
6112110050	0.9535	1.2631
6112110060	0.9535	1.2631
6112120010	0.2384	0.3158
6112120020	0.2384	0.3158
6112120030	0.2384	0.3158
6112120040	0.2384	0.3158

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6112120050	0.2384	0.3158
6112120060	0.2384	0.3158
6112191010	0.2492	0.3301
6112191020	0.2492	0.3301
6112191030	0.2492	0.3301
6112191040	0.2492	0.3301
6112191050	0.2492	0.3301
6112191060	0.2492	0.3301
6112201060	0.2492	0.3301
6112201070	0.2492	0.3301
6112201080	0.2492	0.3301
6112201090	0.2492	0.3301
6112202010	0.8722	1.1554
6112202020	0.3738	0.4952
6112202030	0.2492	0.3301
6112310010	0.1192	0.1579
6112310020	0.1192	0.1579
6112390010	1.0727	1.4210
6112410010	0.1192	0.1579
6112410020	0.1192	0.1579
6112410030	0.1192	0.1579
6112410040	0.1192	0.1579
6112490010	0.8939	1.1841
6113001005	0.1246	0.1651
6113001010	0.1246	0.1651
6113001012	0.1246	0.1651
6113009015	0.3489	0.4622
6113009020	0.3489	0.4622
6113009038	0.3489	0.4622
6113009042	0.3489	0.4622
6113009055	0.3489	0.4622
6113009060	0.3489	0.4622
6113009074	0.3489	0.4622
6113009082	0.3489	0.4622
6114200005	0.9747	1.2911
6114200010	0.9747	1.2911
6114200015	0.8528	1.1297
6114200020	0.8528	1.1297
6114200035	0.8528	1.1297
6114200040	0.8528	1.1297
6114200042	0.3655	0.4842
6114200044	0.8528	1.1297
6114200046	0.8528	1.1297
6114200048	0.8528	1.1297
6114200052	0.8528	1.1297
6114200055	0.8528	1.1297
6114200060	0.8528	1.1297
6114301010	0.2437	0.3228
6114301020	0.2437	0.3228
6114302060	0.1218	0.1613
6114303014	0.2437	0.3228
6114303020	0.2437	0.3228
6114303030	0.2437	0.3228
6114303042	0.2437	0.3228
6114303044	0.2437	0.3228
6114303052	0.2437	0.3228
6114303054	0.2437	0.3228
6114303060	0.2437	0.3228
6114303070	0.2437	0.3228
6114909045	0.5482	0.7262
6114909055	0.3655	0.4842
6114909070	0.3655	0.4842
6115100500	0.4386	0.5810
6115101510	1.0965	1.4525
6115103000	0.9868	1.3072
6115106000	0.1096	0.1452
6115298010	1.0965	1.4525
6115309030	0.7675	1.0167

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6115956000	0.9868	1.3072
6115959000	0.9868	1.3072
6115966020	0.2193	0.2905
6115991420	0.2193	0.2905
6115991920	0.2193	0.2905
6115999000	0.1096	0.1452
6116101300	0.3463	0.4587
6116101720	0.8079	1.0702
6116104810	0.4444	0.5887
6116105510	0.6464	0.8563
6116107510	0.6464	0.8563
6116109500	0.1616	0.2141
6116920500	0.8079	1.0702
6116920800	0.8079	1.0702
6116926410	1.0388	1.3761
6116926420	1.0388	1.3761
6116926430	1.1542	1.5289
6116926440	1.0388	1.3761
6116927450	1.0388	1.3761
6116927460	1.1542	1.5289
6116927470	1.0388	1.3761
6116928800	1.0388	1.3761
6116929400	1.0388	1.3761
6116938800	0.1154	0.1529
6116939400	0.1154	0.1529
6116994800	0.1154	0.1529
6116995400	0.1154	0.1529
6116999510	0.4617	0.6116
6116999530	0.3463	0.4587
6117106010	0.9234	1.2232
6117106020	0.2308	0.3057
6117808500	0.9234	1.2232
6117808710	1.1542	1.5289
6117808770	0.1731	0.2293
6117809510	0.9234	1.2232
6117809540	0.3463	0.4587
6117809570	0.1731	0.2293
6117909003	1.1542	1.5289
6117909015	0.2308	0.3057
6117909020	1.1542	1.5289
6117909040	1.1542	1.5289
6117909060	1.1542	1.5289
6117909080	1.1542	1.5289
6201301200	0.8981	1.1897
6201302010	1.0602	1.4044
6201302020	1.0602	1.4044
6201302025	1.2473	1.6522
6201302035	1.2473	1.6522
6201302050	0.8108	1.0740
6201302060	0.8108	1.0740
6201303000	0.6486	0.8592
6201304000	0.8108	1.0740
6201305005	0.8108	1.0740
6201305010	0.8108	1.0740
6201305021	1.2473	1.6522
6201305031	1.2473	1.6522
6201305041	1.2473	1.6522
6201305051	0.8108	1.0740
6201305061	0.8108	1.0740
6201306000	0.6486	0.8592
6201307000	0.8108	1.0740
6201308005	0.8108	1.0740
6201308010	0.8108	1.0740
6201308021	1.2473	1.6522
6201308031	1.2473	1.6522
6201308041	1.2473	1.6522
6201308051	0.8108	1.0740
6201308061	0.8108	1.0740

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6201402015	0.2495	0.3305
6201402020	0.2495	0.3305
6201402030	0.3118	0.4130
6201402040	0.3118	0.4130
6201404500	0.3118	0.4130
6201405011	0.3118	0.4130
6201405021	0.3118	0.4130
6201407000	0.3118	0.4130
6201407511	0.3118	0.4130
6201407521	0.3118	0.4130
6201902910	0.5613	0.7435
6201902930	0.3742	0.4957
6201902960	0.3742	0.4957
6201904910	0.5613	0.7435
6201904930	0.3742	0.4957
6201904960	0.3742	0.4957
6201906910	0.5613	0.7435
6201906930	0.3742	0.4957
6201906960	0.3742	0.4957
6202301200	0.8879	1.1762
6202302010	1.0482	1.3885
6202302020	1.0482	1.3885
6202302025	1.2332	1.6336
6202302035	1.2332	1.6336
6202302050	0.8016	1.0618
6202302060	0.8016	1.0618
6202303000	0.9865	1.3068
6202304000	0.9865	1.3068
6202305010	0.9865	1.3068
6202305020	0.9865	1.3068
6202305026	1.2332	1.6336
6202305031	1.2332	1.6336
6202305061	0.9865	1.3068
6202305071	0.9865	1.3068
6202306000	0.9865	1.3068
6202307000	0.9865	1.3068
6202308010	0.9865	1.3068
6202308020	0.9865	1.3068
6202308026	1.2332	1.6336
6202308031	1.2332	1.6336
6202308061	0.9865	1.3068
6202308071	0.9865	1.3068
6202402005	0.2524	0.3343
6202402010	0.2524	0.3343
6202402020	0.3155	0.4179
6202402030	0.3155	0.4179
6202402500	0.2960	0.3921
6202403510	0.2466	0.3267
6202403520	0.2466	0.3267
6202405011	0.2466	0.3267
6202405021	0.2466	0.3267
6202405500	0.2960	0.3921
6202406010	0.2466	0.3267
6202406020	0.2466	0.3267
6202407511	0.2466	0.3267
6202407521	0.2466	0.3267
6202902910	0.5678	0.7521
6202902930	0.3786	0.5015
6202902960	0.2524	0.3343
6202904911	0.5549	0.7351
6202904931	0.3700	0.4901
6202904961	0.2466	0.3267
6202906911	0.5549	0.7351
6202906931	0.3700	0.4901
6202906961	0.2466	0.3267
6203122010	0.1233	0.1633
6203122020	0.1233	0.1633
6203191010	0.9865	1.3068

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6203191020	0.9865	1.3068
6203191030	0.9865	1.3068
6203199010	0.5549	0.7351
6203199020	0.5549	0.7351
6203199030	0.5549	0.7351
6203199050	0.37	0.4901
6203199080	0.2466	0.3267
6203221000	1.2332	1.6336
6203223010	0.9865	1.3068
6203223015	0.9865	1.3068
6203223020	0.9865	1.3068
6203223030	0.9865	1.3068
6203223050	0.9865	1.3068
6203223060	0.9865	1.3068
6203230050	0.3083	0.4084
6203230055	0.3083	0.4084
6203230060	0.3083	0.4084
6203230070	0.3083	0.4084
6203230080	0.3083	0.4084
6203230090	0.3083	0.4084
6203321000	0.6782	0.8984
6203322010	1.1715	1.5518
6203322020	1.1715	1.5518
6203322030	1.1715	1.5518
6203322040	1.1715	1.5518
6203322050	1.1715	1.5518
6203332010	0.1233	0.1633
6203332020	0.1233	0.1633
6203392010	0.1233	0.1633
6203392020	0.1233	0.1633
6203399010	0.5549	0.7351
6203399030	0.3700	0.4901
6203399060	0.2466	0.3267
6203420300	1.0616	1.4063
6203420505	0.7077	0.9375
6203420510	0.9436	1.2499
6203420525	0.9436	1.2499
6203420550	0.9436	1.2499
6203420590	0.9436	1.2499
6203420703	1.0616	1.4063
6203420706	1.1796	1.5626
6203420711	1.1796	1.5626
6203420716	0.9436	1.2499
6203420721	1.1796	1.5626
6203420726	1.1796	1.5626
6203420731	1.1796	1.5626
6203420736	1.1796	1.5626
6203420741	0.9436	1.2499
6203420746	0.9436	1.2499
6203420751	0.8752	1.1593
6203420756	0.8752	1.1593
6203420761	0.8752	1.1593
6203421700	1.0616	1.4063
6203422505	0.7077	0.9375
6203422510	0.9436	1.2499
6203422525	0.9436	1.2499
6203422550	0.9436	1.2499
6203422590	0.9436	1.2499
6203424503	1.0616	1.4063
6203424506	1.1796	1.5626
6203424511	1.1796	1.5626
6203424514	0.9436	1.2499
6203424518	0.9436	1.2499
6203424521	1.1796	1.5626
6203424526	1.1796	1.5626
6203424531	1.1796	1.5626
6203424536	1.1796	1.5626
6203424541	0.9436	1.2499

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6203424546	0.9436	1.2499
6203424551	0.8752	1.1593
6203424556	0.8752	1.1593
6203424561	0.8752	1.1593
6203430100	0.1887	0.2500
6203430300	0.1180	0.1563
6203430505	0.1180	0.1563
6203430510	0.2359	0.3125
6203430525	0.2359	0.3125
6203430550	0.2359	0.3125
6203430590	0.2359	0.3125
6203431110	0.0590	0.0782
6203431190	0.0590	0.0782
6203431310	0.1167	0.1546
6203431315	0.1167	0.1546
6203431320	0.1167	0.1546
6203431330	0.1167	0.1546
6203431335	0.1167	0.1546
6203431340	0.1167	0.1546
6203434500	0.1887	0.2500
6203435500	0.1180	0.1563
6203436005	0.1180	0.1563
6203436010	0.2359	0.3125
6203436025	0.2359	0.3125
6203436050	0.2359	0.3125
6203436090	0.2359	0.3125
6203436500	0.4128	0.5468
6203437510	0.0590	0.0782
6203437590	0.0590	0.0782
6203439009	0.1167	0.1546
6203439011	0.1167	0.1546
6203439015	0.1167	0.1546
6203439020	0.1167	0.1546
6203439030	0.1167	0.1546
6203439035	0.1167	0.1546
6203439040	0.1167	0.1546
62034390105	0.1180	0.1563
62034390110	0.2359	0.3125
62034390125	0.2359	0.3125
62034390150	0.2359	0.3125
62034390190	0.2359	0.3125
62034390515	0.2359	0.3125
62034390520	0.2359	0.3125
62034390530	0.1180	0.1563
62034390545	0.1180	0.1563
62034390550	0.1180	0.1563
62034390560	0.1180	0.1563
62034390920	0.5308	0.7031
62034390930	0.3539	0.4688
62034390945	0.2359	0.3125
62034392505	0.1180	0.1563
62034392510	0.2359	0.3125
62034392525	0.2359	0.3125
62034392550	0.2359	0.3125
62034392590	0.2359	0.3125
62034393500	0.4128	0.5468
62034395015	0.2359	0.3125
62034395020	0.2359	0.3125
62034395030	0.1180	0.1563
62034395045	0.1180	0.1563
62034395050	0.1180	0.1563
62034395060	0.1180	0.1563
62034399020	0.5308	0.7031
62034399030	0.3539	0.4688
62034399045	0.2359	0.3125
6204110000	0.0617	0.0817
6204120010	0.9865	1.3068
6204120020	0.9865	1.3068

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204120030	0.9865	1.3068
6204120040	0.9865	1.3068
6204132010	0.1233	0.1633
6204132020	0.1233	0.1633
6204192000	0.1233	0.1633
6204198010	0.5549	0.7351
6204198020	0.5549	0.7351
6204198030	0.5549	0.7351
6204198040	0.5549	0.7351
6204198060	0.3083	0.4084
6204198090	0.2466	0.3267
6204221000	1.2332	1.6336
6204223010	0.9865	1.3068
6204223030	0.9865	1.3068
6204223040	0.9865	1.3068
6204223050	0.9865	1.3068
6204223060	0.9865	1.3068
6204223065	0.9865	1.3068
6204223070	0.9865	1.3068
6204230030	0.3083	0.4084
6204230035	0.3083	0.4084
6204230040	0.3083	0.4084
6204230045	0.3083	0.4084
6204230050	0.3083	0.4084
6204230055	0.3083	0.4084
6204230060	0.3083	0.4084
6204292015	0.3083	0.4084
6204292020	0.3083	0.4084
6204292040	0.3083	0.4084
6204292050	0.3083	0.4084
6204294010	0.5549	0.7351
6204294022	0.5549	0.7351
6204294034	0.5549	0.7351
6204294047	0.2466	0.3267
6204294070	0.5549	0.7351
6204294082	0.5549	0.7351
6204294092	0.2466	0.3267
6204321000	0.6782	0.8984
6204322010	1.1715	1.5518
6204322020	1.1715	1.5518
6204322030	0.9865	1.3068
6204322040	0.9865	1.3068
6204398010	0.5549	0.7351
6204398030	0.3083	0.4084
6204412010	0.0603	0.0799
6204412020	0.0603	0.0799
6204421000	1.2058	1.5973
6204422000	0.6632	0.8785
6204423010	1.2058	1.5973
6204423020	1.2058	1.5973
6204423030	0.9043	1.1979
6204423040	0.9043	1.1979
6204423050	0.9043	1.1979
6204423060	0.9043	1.1979
6204431000	0.4823	0.6389
6204432000	0.0603	0.0799
6204442000	0.4316	0.5717
6204495010	0.5549	0.7351
6204495030	0.2466	0.3267
6204510010	0.0631	0.0836
6204510020	0.0631	0.0836
6204521000	1.2618	1.6715
6204522010	1.1988	1.5880
6204522020	1.1988	1.5880
6204522030	1.1988	1.5880
6204522040	1.1988	1.5880
6204522070	1.0095	1.3372
6204522080	1.0095	1.3372

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204531000	0.4416	0.5850
6204532010	0.0631	0.0836
6204532020	0.0631	0.0836
6204533010	0.2524	0.3343
6204533020	0.2524	0.3343
6204591000	0.4416	0.5850
6204594010	0.5678	0.7521
6204594030	0.2524	0.3343
6204594060	0.2524	0.3343
6204610510	0.0590	0.0782
6204610520	0.0590	0.0782
6204611510	0.0590	0.0782
6204611520	0.0590	0.0782
6204611530	0.0590	0.0782
6204611540	0.1180	0.1563
6204616010	0.0590	0.0782
6204616020	0.0590	0.0782
6204618010	0.0590	0.0782
6204618020	0.0590	0.0782
6204618030	0.0590	0.0782
6204618040	0.1180	0.1563
6204620300	0.8681	1.1499
6204620505	0.7077	0.9375
6204620510	0.9436	1.2499
6204620525	0.9436	1.2499
6204620550	0.9436	1.2499
6204621503	1.0616	1.4063
6204621506	1.1796	1.5626
6204621511	1.1796	1.5626
6204621521	0.9436	1.2499
6204621526	1.1796	1.5626
6204621531	1.1796	1.5626
6204621536	1.1796	1.5626
6204621541	1.1796	1.5626
6204621546	0.9436	1.2499
6204621551	0.9436	1.2499
6204621556	0.9335	1.2366
6204621561	0.9335	1.2366
6204621566	0.9335	1.2366
6204625000	0.8681	1.1499
6204626005	0.7077	0.9375
6204626010	0.9436	1.2499
6204626025	0.9436	1.2499
6204626050	0.9436	1.2499
6204627000	1.1796	1.5626
6204628003	1.0616	1.4063
6204628006	1.1796	1.5626
6204628011	1.1796	1.5626
6204628014	0.9436	1.2499
6204628018	0.9436	1.2499
6204628026	1.1796	1.5626
6204628031	1.1796	1.5626
6204628036	1.1796	1.5626
6204628041	1.1796	1.5626
6204628046	0.9436	1.2499
6204628051	0.9436	1.2499
6204628056	0.9335	1.2366
6204628061	0.9335	1.2366
6204628066	0.9335	1.2366
6204630100	0.2019	0.2674
6204630200	0.1180	0.1563
6204630305	0.1180	0.1563
6204630310	0.2359	0.3125
6204630325	0.2359	0.3125
6204630350	0.2359	0.3125
6204630810	0.0590	0.0782
6204630820	0.0590	0.0782
6204630910	0.0603	0.0799

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204630990	0.0603	0.0799
6204631110	0.2412	0.3195
6204631125	0.2412	0.3195
6204631130	0.2412	0.3195
6204631132	0.2309	0.3059
6204631135	0.2309	0.3059
6204631140	0.2309	0.3059
6204635000	0.2019	0.2674
6204635500	0.1180	0.1563
6204636005	0.1180	0.1563
6204636010	0.2359	0.3125
6204636025	0.2359	0.3125
6204636050	0.2359	0.3125
6204636500	0.4718	0.6250
6204637010	0.0590	0.0782
6204637020	0.0590	0.0782
6204637510	0.0603	0.0799
6204637590	0.0603	0.0799
6204639009	0.2412	0.3195
6204639011	0.2412	0.3195
6204639025	0.2412	0.3195
6204639030	0.2412	0.3195
6204639032	0.2309	0.3059
6204639035	0.2309	0.3059
6204639040	0.2309	0.3059
6204690105	0.1180	0.1563
6204690110	0.2359	0.3125
6204690125	0.2359	0.3125
6204690150	0.2359	0.3125
6204690210	0.0590	0.0782
6204690220	0.0590	0.0782
6204690230	0.0590	0.0782
6204690310	0.2359	0.3125
6204690320	0.2359	0.3125
6204690330	0.2359	0.3125
6204690340	0.2309	0.3059
6204690350	0.2309	0.3059
6204690360	0.2309	0.3059
6204690510	0.5308	0.7031
6204690530	0.2359	0.3125
6204690570	0.3539	0.4688
6204690610	0.5308	0.7031
6204690630	0.2359	0.3125
6204690644	0.2359	0.3125
6204690646	0.2359	0.3125
6204690650	0.3539	0.4688
6204691505	0.1180	0.1563
6204691510	0.2359	0.3125
6204691525	0.2359	0.3125
6204691550	0.2359	0.3125
6204692210	0.0590	0.0782
6204692220	0.0590	0.0782
6204692230	0.0590	0.0782
6204692810	0.2359	0.3125
6204692820	0.2359	0.3125
6204692830	0.2359	0.3125
6204692840	0.2309	0.3059
6204692850	0.2309	0.3059
6204692860	0.2309	0.3059
6204696510	0.5308	0.7031
6204696530	0.2359	0.3125
6204696570	0.3539	0.4688
6204698010	0.5308	0.7031
6204698030	0.2359	0.3125
6204698044	0.2359	0.3125
6204698046	0.2359	0.3125
6204698050	0.3539	0.4688
6205201000	1.1796	1.5626

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6205202003	0.9436	1.2499
6205202016	0.9436	1.2499
6205202021	0.9436	1.2499
6205202026	0.9436	1.2499
6205202031	0.9436	1.2499
6205202036	1.0616	1.4063
6205202041	1.0616	1.4063
6205202044	1.0616	1.4063
6205202047	0.9436	1.2499
6205202051	0.9436	1.2499
6205202056	0.9436	1.2499
6205202061	0.9436	1.2499
6205202063	0.9436	1.2499
6205202067	0.9436	1.2499
6205202071	0.9436	1.2499
6205202076	0.9436	1.2499
6205301000	0.4128	0.5468
6205302010	0.2949	0.3906
6205302020	0.2949	0.3906
6205302030	0.2949	0.3906
6205302040	0.2949	0.3906
6205302050	0.2949	0.3906
6205302055	0.2949	0.3906
6205302060	0.2949	0.3906
6205302071	0.2949	0.3906
6205302073	0.2949	0.3906
6205302075	0.2949	0.3906
6205302080	0.2949	0.3906
6205900710	0.1180	0.1563
6205900720	0.1180	0.1563
6205901000	0.2359	0.3125
6205903010	0.5308	0.7031
6205903030	0.2359	0.3125
6205903050	0.1769	0.2343
6205904010	0.5308	0.7031
6205904030	0.2359	0.3125
6205904040	0.2359	0.3125
6206100010	0.5308	0.7031
6206100030	0.2359	0.3125
6206100040	0.1180	0.1563
6206100050	0.2359	0.3125
6206203010	0.0590	0.0782
6206203020	0.0590	0.0782
6206301000	1.1796	1.5626
6206302000	0.6488	0.8594
6206303003	0.9436	1.2499
6206303011	0.9436	1.2499
6206303021	0.9436	1.2499
6206303031	0.9436	1.2499
6206303043	0.9436	1.2499
6206303045	0.9436	1.2499
6206303051	0.9436	1.2499
6206303061	0.9436	1.2499
6206401000	0.4128	0.5468
6206403010	0.2949	0.3906
6206403020	0.2949	0.3906
6206403025	0.2949	0.3906
6206403033	0.2949	0.3906
6206403035	0.2949	0.3906
6206403040	0.2949	0.3906
6206403050	0.2949	0.3906
6206900010	0.5308	0.7031
6206900030	0.2359	0.3125
6206900040	0.1769	0.2343
6207110000	1.0281	1.3619
6207199010	0.3427	0.4540
6207199030	0.4569	0.6052
6207210010	1.0502	1.3912

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6207210020	1.0502	1.3912
6207210030	1.0502	1.3912
6207210040	1.0502	1.3912
6207220000	0.3501	0.4638
6207291000	0.1167	0.1546
6207299030	0.1167	0.1546
6207911000	1.0852	1.4375
6207913010	1.0852	1.4375
6207913020	1.0852	1.4375
6207997520	0.2412	0.3195
6207998510	0.2412	0.3195
6207998520	0.2412	0.3195
6208110000	0.2412	0.3195
6208192000	1.0852	1.4375
6208195000	0.1206	0.1598
6208199000	0.2412	0.3195
6208210010	1.0026	1.3281
6208210020	1.0026	1.3281
6208210030	1.0026	1.3281
6208220000	0.1180	0.1563
6208299030	0.2359	0.3125
6208911010	1.0852	1.4375
6208911020	1.0852	1.4375
6208913010	1.0852	1.4375
6208913020	1.0852	1.4375
6208920010	0.1206	0.1598
6208920020	0.1206	0.1598
6208920030	0.1206	0.1598
6208920040	0.1206	0.1598
6208992010	0.0603	0.0799
6208992020	0.0603	0.0799
6208995010	0.2412	0.3195
6208995020	0.2412	0.3195
6208998010	0.2412	0.3195
6208998020	0.2412	0.3195
6209201000	1.0967	1.4528
6209202000	1.0390	1.3763
6209203000	0.9236	1.2235
6209205030	0.9236	1.2235
6209205035	0.9236	1.2235
6209205045	0.9236	1.2235
6209205050	0.9236	1.2235
6209301000	0.2917	0.3864
6209302000	0.2917	0.3864
6209303010	0.2334	0.3092
6209303020	0.2334	0.3092
6209303030	0.2334	0.3092
6209303040	0.2334	0.3092
6209900500	0.1154	0.1529
6209901000	0.2917	0.3864
6209902000	0.2917	0.3864
6209903010	0.2917	0.3864
6209903015	0.2917	0.3864
6209903020	0.2917	0.3864
6209903030	0.2917	0.3864
6209903040	0.2917	0.3864
6210109010	0.2170	0.2875
6210109040	0.2170	0.2875
6210203000	0.0362	0.0480
6210205010	0.0844	0.1118
6210205020	0.4316	0.5717
6210205029	0.4316	0.5717
6210207000	0.1809	0.2396
6210209039	0.1110	0.1470
6210209049	0.1110	0.1470
6210303000	0.0362	0.0480
6210305010	0.0844	0.1118
6210305020	0.0863	0.1143

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6210305029	0.0863	0.1143
6210307000	0.0362	0.0480
6210309020	0.4220	0.5590
6210309039	0.1480	0.1960
6210309049	0.1480	0.1960
6210401500	0.0370	0.0490
6210402531	0.0863	0.1143
6210402539	0.0863	0.1143
6210402540	0.4316	0.5717
6210402550	0.4316	0.5717
6210402800	0.1110	0.1470
6210402933	0.1110	0.1470
6210402945	0.1110	0.1470
6210402960	0.1110	0.1470
6210403500	0.0370	0.0490
6210405531	0.0863	0.1143
6210405539	0.0863	0.1143
6210405540	0.4316	0.5717
6210405550	0.4316	0.5717
6210407500	0.1110	0.1470
6210408033	0.1110	0.1470
6210408045	0.1110	0.1470
6210408060	0.1110	0.1470
6210500300	0.0370	0.0490
6210500531	0.0863	0.1143
6210500539	0.0863	0.1143
6210500540	0.0863	0.1143
6210500555	0.0863	0.1143
6210501200	0.4316	0.5717
6210502260	0.1480	0.1960
6210502270	0.1480	0.1960
6210502290	0.1480	0.1960
6210503500	0.0370	0.0490
6210505531	0.0863	0.1143
6210505539	0.0863	0.1143
6210505540	0.0863	0.1143
6210505555	0.0863	0.1143
6210507500	0.4316	0.5717
6210508060	0.1480	0.1960
6210508070	0.1480	0.1960
6210508090	0.1480	0.1960
6211111010	0.1206	0.1598
6211111020	0.1206	0.1598
6211118010	1.0852	1.4375
6211118020	1.0852	1.4375
6211118040	0.2412	0.3195
6211121010	0.0603	0.0799
6211121020	0.0603	0.0799
6211128010	1.0852	1.4375
6211128020	1.0852	1.4375
6211128030	0.6029	0.7986
6211200410	0.7717	1.0222
6211200420	0.0965	0.1278
6211200430	0.7717	1.0222
6211200440	0.0965	0.1278
6211200810	0.3858	0.5111
6211200820	0.3858	0.5111
6211201510	0.7615	1.0087
6211201515	0.2343	0.3104
6211201520	0.6443	0.8535
6211201525	0.2929	0.3880
6211201530	0.7615	1.0087
6211201535	0.3515	0.4656
6211201540	0.7615	1.0087
6211201545	0.2929	0.3880
6211201550	0.7615	1.0087
6211201555	0.4100	0.5431
6211201560	0.7615	1.0087

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211201565	0.2343	0.3104
6211202400	0.1233	0.1633
6211202810	0.8016	1.0618
6211202820	0.2466	0.3267
6211202830	0.3083	0.4084
6211203400	0.1233	0.1633
6211203810	0.8016	1.0618
6211203820	0.2466	0.3267
6211203830	0.3083	0.4084
6211204400	0.1233	0.1633
6211204815	0.8016	1.0618
6211204835	0.2466	0.3267
6211204860	0.3083	0.4084
6211205400	0.1233	0.1633
6211205810	0.8016	1.0618
6211205820	0.2466	0.3267
6211205830	0.3083	0.4084
6211206400	0.1233	0.1633
6211206810	0.8016	1.0618
6211206820	0.2466	0.3267
6211206830	0.3083	0.4084
6211207400	0.1233	0.1633
6211207810	0.9249	1.2252
6211207820	0.2466	0.3267
6211207830	0.3083	0.4084
6211325003	0.6412	0.8494
6211325003	0.6412	0.8494
6211325007	0.8016	1.0618
6211325007	0.8016	1.0618
6211325010	0.9865	1.3068
6211325015	0.9865	1.3068
6211325025	0.9865	1.3068
6211325030	0.9249	1.2252
6211325040	0.9249	1.2252
6211325050	0.9249	1.2252
6211325060	0.9249	1.2252
6211325070	0.9249	1.2252
6211325075	0.9249	1.2252
6211325081	0.9249	1.2252
6211329003	0.6412	0.8494
6211329007	0.8016	1.0618
6211329010	0.9865	1.3068
6211329015	0.9865	1.3068
6211329025	0.9865	1.3068
6211329030	0.9249	1.2252
6211329040	0.9249	1.2252
6211329050	0.9249	1.2252
6211329060	0.9249	1.2252
6211329070	0.9249	1.2252
6211329075	0.9249	1.2252
6211329081	0.9249	1.2252
6211335003	0.0987	0.1307
6211335007	0.1233	0.1633
6211335010	0.3083	0.4084
6211335015	0.3083	0.4084
6211335017	0.3083	0.4084
6211335025	0.3700	0.4901
6211335030	0.3700	0.4901
6211335035	0.3700	0.4901
6211335040	0.3700	0.4901
6211335054	0.3700	0.4901
6211335058	0.3700	0.4901
6211335061	0.3700	0.4901
6211339003	0.0987	0.1307
6211339007	0.1233	0.1633
6211339010	0.3083	0.4084
6211339015	0.3083	0.4084
6211339017	0.3083	0.4084

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211339025	0.3700	0.4901
6211339030	0.3700	0.4901
6211339035	0.3700	0.4901
6211339042	0.3700	0.4901
6211339044	0.3700	0.4901
6211339054	0.3700	0.4901
6211339058	0.3700	0.4901
6211339061	0.3700	0.4901
6211390310	0.1233	0.1633
6211390320	0.1233	0.1633
6211390330	0.1233	0.1633
6211390340	0.1233	0.1633
6211390345	0.1233	0.1633
6211390351	0.1233	0.1633
6211391510	0.2466	0.3267
6211391520	0.2466	0.3267
6211391530	0.2466	0.3267
6211391540	0.2466	0.3267
6211391550	0.2466	0.3267
6211391560	0.2466	0.3267
6211391570	0.2466	0.3267
6211391590	0.2466	0.3267
6211393010	0.1233	0.1633
6211393020	0.1233	0.1633
6211393030	0.1233	0.1633
6211393040	0.1233	0.1633
6211393045	0.1233	0.1633
6211393051	0.1233	0.1633
6211398010	0.2466	0.3267
6211398020	0.2466	0.3267
6211398030	0.2466	0.3267
6211398040	0.2466	0.3267
6211398050	0.2466	0.3267
6211398060	0.2466	0.3267
6211398070	0.2466	0.3267
6211398090	0.2466	0.3267
6211420503	0.6412	0.8494
6211420507	0.8016	1.0618
6211420510	0.9865	1.3068
6211420520	0.9865	1.3068
6211420525	1.1099	1.4702
6211420530	0.8632	1.1434
6211420540	0.9865	1.3068
6211420554	1.1099	1.4702
6211420556	1.1099	1.4702
6211420560	0.9865	1.3068
6211420570	1.1099	1.4702
6211420575	1.1099	1.4702
6211420581	1.1099	1.4702
6211421003	0.6412	0.8494
6211421007	0.8016	1.0618
6211421010	0.9865	1.3068
6211421020	0.9865	1.3068
6211421025	1.1099	1.4702
6211421030	0.8632	1.1434
6211421040	0.9865	1.3068
6211421054	1.1099	1.4702
6211421056	1.1099	1.4702
6211421060	0.9865	1.3068
6211421070	1.1099	1.4702
6211421075	1.1099	1.4702
6211421082	1.1099	1.4702
6211421088	1.1099	1.4702
6211421092	1.1099	1.4702
6211430503	0.0987	0.1307
6211430507	0.1233	0.1633
6211430510	0.2466	0.3267
6211430520	0.2466	0.3267

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211430530	0.2466	0.3267
6211430540	0.2466	0.3267
6211430550	0.2466	0.3267
6211430560	0.2466	0.3267
6211430564	0.3083	0.4084
6211430566	0.2466	0.3267
6211430574	0.3083	0.4084
6211430576	0.3700	0.4901
6211430578	0.3700	0.4901
6211430591	0.2466	0.3267
6211431003	0.0987	0.1307
6211431007	0.1233	0.1633
6211431010	0.2466	0.3267
6211431020	0.2466	0.3267
6211431030	0.2466	0.3267
6211431040	0.2466	0.3267
6211431050	0.2466	0.3267
6211431059	0.2466	0.3267
6211431062	0.2466	0.3267
6211431064	0.3083	0.4084
6211431066	0.2466	0.3267
6211431074	0.3083	0.4084
6211431076	0.3700	0.4901
6211431078	0.3700	0.4901
6211431082	0.2466	0.3267
6211431088	0.2466	0.3267
6211431092	0.2466	0.3267
6211491520	0.0617	0.0817
6211491530	0.1233	0.1634
6211491540	0.0617	0.0817
6211491550	0.0617	0.0817
6211491555	0.0617	0.0817
6211491561	0.0617	0.0817
6211492510	0.2466	0.3267
6211492520	0.2466	0.3267
6211492530	0.2466	0.3267
6211492540	0.2466	0.3267
6211492550	0.2466	0.3267
6211492560	0.2466	0.3267
6211492570	0.2466	0.3267
6211492580	0.2466	0.3267
6211492590	0.2466	0.3267
6211496020	0.0617	0.0817
6211496030	0.1233	0.1634
6211496040	0.0617	0.0817
6211496050	0.0617	0.0817
6211496055	0.0617	0.0817
6211498010	0.2466	0.3267
6211498020	0.2466	0.3267
6211498030	0.2466	0.3267
6211498040	0.2466	0.3267
6211498050	0.2466	0.3267
6211498060	0.2466	0.3267
6211498070	0.2466	0.3267
6211498080	0.2466	0.3267
6211498090	0.2466	0.3267
6212105010	0.9138	1.2105
6212105020	0.2285	0.3027
6212105030	0.2285	0.3027
6212109010	0.9138	1.2105
6212109020	0.2285	0.3027
6212109040	0.2285	0.3027
6212200010	0.6854	0.9079
6212200020	0.2856	0.3783
6212200030	0.1142	0.1513
6212300010	0.6854	0.9079
6212300020	0.2856	0.3783
6212300030	0.1142	0.1513

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6212900010	0.1828	0.2421
6212900020	0.1828	0.2421
6212900030	0.1828	0.2421
6212900050	0.0914	0.1211
6212900090	0.4112	0.5447
6213201000	1.1187	1.4819
6213202000	1.0069	1.3338
6213900700	0.4475	0.5928
6213901000	0.4475	0.5928
6213902000	0.3356	0.4446
6214300000	0.1142	0.1513
6214400000	0.1142	0.1513
6214900010	0.8567	1.1348
6214900090	0.2285	0.3027
6215100025	0.1142	0.1513
6215200000	0.1142	0.1513
6215900015	1.0281	1.3619
6216000800	0.0685	0.0907
6216001300	0.3427	0.4540
6216001720	0.6397	0.8474
6216001730	0.1599	0.2118
6216001900	0.3427	0.4540
6216002110	0.5780	0.7657
6216002120	0.2477	0.3281
6216002410	0.6605	0.8749
6216002425	0.1651	0.2187
6216002600	0.1651	0.2187
6216002910	0.6605	0.8749
6216002925	0.1651	0.2187
6216003100	0.1651	0.2187
6216003300	0.5898	0.7813
6216003500	0.5898	0.7813
6216003800	1.1796	1.5626
6216004100	1.1796	1.5626
6217109510	0.9646	1.2778
6217109520	0.1809	0.2396
6217109530	0.2412	0.3195
6217909003	0.9646	1.2778
6217909005	0.1809	0.2396
6217909010	0.2412	0.3195
6217909025	0.9646	1.2778
6217909030	0.1809	0.2396
6217909035	0.2412	0.3195
6217909050	0.9646	1.2778
6217909055	0.1809	0.2396
6217909060	0.2412	0.3195
6217909075	0.9646	1.2778
6217909080	0.1809	0.2396
6217909085	0.2412	0.3195
6301300010	0.8305	1.1001
6301300020	0.8305	1.1001
6301900030	0.2215	0.2934
6302100005	1.1073	1.4668
6302100008	1.1073	1.4668
6302100015	1.1073	1.4668
6302213010	1.1073	1.4668
6302213020	1.1073	1.4668
6302213030	1.1073	1.4668
6302213040	1.1073	1.4668
6302213050	1.1073	1.4668
6302215010	0.7751	1.0267
6302215020	0.7751	1.0267
6302215030	0.7751	1.0267
6302215040	0.7751	1.0267
6302215050	0.7751	1.0267
6302217010	1.1073	1.4668
6302217020	1.1073	1.4668
6302217030	1.1073	1.4668

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302217040	1.1073	1.4668
6302217050	1.1073	1.4668
6302219010	0.7751	1.0267
6302219020	0.7751	1.0267
6302219030	0.7751	1.0267
6302219040	0.7751	1.0267
6302219050	0.7751	1.0267
6302221010	0.5537	0.7335
6302221020	0.3876	0.5134
6302221030	0.5537	0.7335
6302221040	0.3876	0.5134
6302221050	0.3876	0.5134
6302221060	0.3876	0.5134
6302222010	0.3876	0.5134
6302222020	0.3876	0.5134
6302222030	0.3876	0.5134
6302290020	0.2215	0.2934
6302313010	1.1073	1.4668
6302313020	1.1073	1.4668
6302313030	1.1073	1.4668
6302313040	1.1073	1.4668
6302313050	1.1073	1.4668
6302315010	0.7751	1.0267
6302315020	0.7751	1.0267
6302315030	0.7751	1.0267
6302315040	0.7751	1.0267
6302315050	0.7751	1.0267
6302317010	1.1073	1.4668
6302317020	1.1073	1.4668
6302317030	1.1073	1.4668
6302317040	1.1073	1.4668
6302317050	1.1073	1.4668
6302319010	0.7751	1.0267
6302319020	0.7751	1.0267
6302319030	0.7751	1.0267
6302319040	0.7751	1.0267
6302319050	0.7751	1.0267
6302321010	0.5537	0.7335
6302321020	0.3876	0.5134
6302321030	0.5537	0.7335
6302321040	0.3876	0.5134
6302321050	0.3876	0.5134
6302321060	0.3876	0.5134
6302322010	0.5537	0.7335
6302322020	0.3876	0.5134
6302322030	0.5537	0.7335
6302322040	0.3876	0.5134
6302322050	0.3876	0.5134
6302322060	0.3876	0.5134
6302390030	0.2215	0.2934
6302402010	0.9412	1.2468
6302511000	0.5537	0.7335
6302512000	0.8305	1.1001
6302513000	0.5537	0.7335
6302514000	0.7751	1.0267
6302593020	0.5537	0.7335
6302600010	1.1073	1.4668
6302600020	0.9966	1.3202
6302600030	0.9966	1.3202
6302910005	0.9966	1.3202
6302910015	1.1073	1.4668
6302910025	0.9966	1.3202
6302910035	0.9966	1.3202
6302910045	0.9966	1.3202
6302910050	0.9966	1.3202
6302910060	0.9966	1.3202
6302931000	0.4429	0.5867
6302932000	0.4429	0.5867

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302992000	0.2215	0.2934
6303191100	0.8859	1.1735
6303910010	0.6090	0.8067
6303910020	0.6090	0.8067
6303921000	0.2768	0.3667
6303922010	0.2768	0.3667
6303922030	0.2768	0.3667
6303922050	0.2768	0.3667
6303990010	0.2768	0.3667
6304111000	0.9966	1.3202
6304113000	0.1107	0.1466
6304190500	0.9966	1.3202
6304191000	1.1073	1.4668
6304191500	0.3876	0.5134
6304192000	0.3876	0.5134
6304193060	0.2215	0.2934
6304200020	0.8859	1.1735
6304200070	0.2215	0.2934
6304910120	0.8859	1.1735
6304910170	0.2215	0.2934
6304920000	0.8859	1.1735
6304996040	0.2215	0.2934
6505001515	1.1189	1.4822
6505001525	0.5594	0.7410
6505001540	1.1189	1.4822
6505002030	0.9412	1.2468
6505002060	0.9412	1.2468
6505002545	0.5537	0.7335
6507000000	0.3986	0.5280
9404401000	0.9966	1.3202
9404409005	0.6644	0.8801
9404409036	0.0997	0.1321
9404901030	0.2104	0.2787
9404901060	0.2104	0.2787
9404901090	0.2104	0.2787
9404908100	0.9966	1.3202
9404909605	0.6644	0.8801
9404909636	0.0997	0.1321
9619002100	0.8681	1.1499
9619002500	0.1085	0.1437
9619003100	0.9535	1.2631
9619003300	1.1545	1.5293
9619004100	0.2384	0.3158
9619004300	0.2384	0.3158
9619006100	0.8528	1.1297
9619006400	0.2437	0.3228
9619006800	0.3655	0.4842
9619007100	1.1099	1.4702
9619007400	0.2466	0.3267
9619007800	0.2466	0.3267
9619007900	0.2466	0.3267

* * * * *

Melissa Bailey,Associate Administrator, Agricultural
Marketing Service.

[FR Doc. 2024–20783 Filed 9–13–24; 8:45 am]

BILLING CODE 3410–02–P**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39****[Docket No. FAA–2024–1296; Project
Identifier MCAI–2023–00844–R; Amendment
39–22802; AD 2024–15–10]****RIN 2120–AA64****Airworthiness Directives; Bell Textron
Canada Limited Helicopters****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 505 helicopters. This AD was prompted by a fuel leakage discovered during fuel system crash impact testing activity. This AD requires installing a grommet around the sump drain port fitting airframe hole, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1296; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Transport Canada material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca*; internet *tc.canada.ca/en/aviation*. You may find the Transport Canada material on the Transport Canada website at *wwwapps.tc.gc.ca/Saf-Sec-Sur/2/cawis-swimm/ad_qs1.aspx*.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood

Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1296.

Other Related Material: For Bell material identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1-450-437-2862 or 1-800-363-8023; fax 1-450-433-0272; email productsupport@bellflight.com; or at bellflight.com/support/contact-support.

FOR FURTHER INFORMATION CONTACT:

Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222-5110; email: michael.hughlett@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF-2023-51, dated July 11, 2023 (Transport Canada AD CF-2023-51), to correct an unsafe condition on certain serial-numbered Bell Textron Canada Limited Model 505 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Bell Textron Canada Limited Model 505 helicopters as identified in Transport Canada AD CF-2023-51. The NPRM published in the **Federal Register** on May 14, 2024 (89 FR 41906). The NPRM was prompted by a fuel leakage discovered during fuel system crash impact testing activity. In a certain position, the knurls on the locking sleeve of the fuel drain quick disconnect valve contacted the airframe cutout upon impact, resisting against the fuel bladder rotational action and causing deformation of the poppet, which led to the valve remaining in the partially open position and subsequent fuel leakage.

The NPRM proposed to require accomplishing the actions specified in Transport Canada AD CF-2023-51, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine Transport Canada AD CF-2023-51 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1296.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, has notified the FAA of the unsafe condition described in its AD. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Material Incorporated by Reference Under 1 CFR Part 51

Transport Canada AD CF-2023-51 specifies installing a split plastic grommet around the periphery of the sump drain port fitting airframe cutout.

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

Other Related Material

The FAA reviewed Bell Alert Service Bulletin 505-21-21, dated June 8, 2021. For certain serial-numbered helicopters, this material specifies procedures for installing a split plastic grommet groove around the periphery of the sump drain port fitting airframe hole cutout with the split line at the 12 o'clock position.

Costs of Compliance

The FAA estimates that this AD affects 145 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Installing a grommet around the sump drain port fitting airframe hole will take approximately 1 work-hour and parts will cost a minimal amount, for an estimated cost of \$85 per helicopter and \$12,325 for the U.S. fleet.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024-15-10 Bell Textron Canada Limited:
Amendment 39-22802; Docket No. FAA-2024-1296; Project Identifier MCAI-2023-00844-R.

(a) Effective Date

This airworthiness directive (AD) is effective October 21, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 505 helicopters, certificated in any category, as identified in Transport Canada AD CF–2023–51, dated July 11, 2023 (Transport Canada AD CF–2023–51).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2810, Fuel Storage.

(e) Unsafe Condition

This AD was prompted by a fuel leakage discovered during fuel system crash impact testing activity. The FAA is issuing this AD to prevent the fuel drain quick disconnect valve from catching on the airframe cutout and reduce the load on the valve body by preventing metal-to-metal contact following an impact. The unsafe condition, if not addressed, could result in a fuel leakage, post impact fire, injuries to occupants, and reduction in time to evacuate the helicopter.

(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, Transport Canada AD CF–2023–51.

(h) Exceptions to Transport Canada AD CF–2023–51

Where Transport Canada AD CF–2023–51 refers to its effective date, this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Michael Hughlett, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone (817) 222–5110; email michael.hughlett@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–51, dated July 11, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–51 material identified in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, CANADA; telephone 888–663–3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca; internet tc.canada.ca/en/aviation. You may find the Transport Canada material on the Transport Canada website at wwwapps.tc.gc.ca/Saf-Sec-Sur/2/cawis-swinn/ad_qs1.aspx.

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

(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 July 23, 2024.

Steven W. Thompson,

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

[FR Doc. 2024–20843 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–1000; Project Identifier AD–2023–01051–T; Amendment 39–22809; AD 2024–16–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400F series airplanes. This AD was prompted by a report that cap seals were not applied to certain fasteners in the fuel tanks during production. This AD requires applying cap seals to certain fastener collars inside the fuel tanks.

The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1000; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- 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. It is also available at regulations.gov under Docket No. FAA–2024–1000.

FOR FURTHER INFORMATION CONTACT:

Samuel Dorsey, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3415; email samuel.j.dorsey@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747–400F series airplanes. The NPRM published in the **Federal Register** on April 12, 2024 (89 FR 25823). The NPRM was prompted by a report indicating that cap seals were not applied to certain fasteners in the fuel tank during production. The FAA issued AD 2022–10–11, Amendment 39–22049 (87 FR 34120, June 6, 2022) to require, among other actions, application of cap seals to certain fasteners in the fuel tank on airplanes having line numbers 645 through 1363 inclusive. Cap seals were determined to be a necessary feature by SFAR 88 reviews and were required to be

retrofitted onto existing airplanes by AD 2022–10–11 and earlier ADs. Boeing intended to incorporate similar changes on future airplanes, ultimately those having line numbers 1364 through 1419 inclusive, via a production design change. However, Boeing discovered that the design change omitted application of the cap seals on eight fasteners (four each on the left and right wings in the inboard main fuel tanks). Without these cap seals, the ends of the fasteners do not have sufficient electrical insulation to prevent arcing in the event of a lightning strike or high-powered short circuit, possibly creating an ignition source in the inboard main fuel tanks. A failure to prevent possible ignition sources in the fuel tank, in combination with flammable fuel vapors, could result in an explosion or fire and consequent loss of the airplane. In the NPRM, the FAA proposed to require applying cap seals to certain fastener collars inside the fuel tanks. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA) and an individual who supported the NPRM without change. The FAA also received an additional

four comments from individuals who had no objection to the NPRM. One commenter expressed concern about the effect on safety of certain internal Boeing practices. This comment is outside the scope of the NPRM.

The FAA received an additional comment from Boeing. The following presents that comment and the FAA's response.

Request for Clarification of Sealant Part Number

Boeing requested an exception be added to paragraph (h) of the proposed AD to correct an incorrect part number listed in the service bulletin for the sealant. Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, inadvertently specifies the application of sealant Boeing Material Specification (BMS) 5–45, CLASS B–2, GRADE 1, for certain required actions. GRADE 1 does not apply to the specification noted. Boeing informed customers of this typographical error via Information Notice 747–57A2371 IN–01 dated May 20, 2024.

The FAA agrees and has added an exception in paragraph (h)(2) of this AD to correct the typographical error. As stated by Boeing, Class B BMS 5–45 sealant does not have an additional grade identifier. Only Class A BMS 5–45 sealant possesses a grade identifier.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Apply cap seals	37 work-hours × \$85 per hour = \$3,145	\$1,000	\$4,145	\$62,175

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023. This material specifies procedures for applying cap seals to four fastener collars inside the fuel tank common to the stiffeners located at the front spar on the left and right wings. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–16–03 The Boeing Company:

Amendment 39–22809; Docket No. FAA–2024–1000; Project Identifier AD–2023–01051–T.

(a) Effective Date

This airworthiness directive (AD) is effective.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that cap seals were not applied to certain fasteners in the fuel tanks during production. The FAA is issuing this AD to address missing cap seals in the fuel tanks. The unsafe condition, if not addressed, could result in a failure to prevent possible ignition sources in the fuel tanks, which in combination with flammable fuel vapors, could result in an explosion or fire and consequent loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2371, dated September 29, 2023, which is referred to in Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(h) Exceptions to Service Information Specifications

(1) Where Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, use the phrase “the original issue date of Requirements Bulletin 747–57A2371 RB,” this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023, states “BMS 5–45, CLASS B–2,

GRADE 1,” this AD requires replacing that text with “BMS 5–45, CLASS B–2.”

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Samuel Dorsey, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3415; email samuel.j.dorsey@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–57A2371 RB, dated September 29, 2023.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Boulevard, MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(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-locationsoremailfr.inspection@nara.gov.

Issued on July 30, 2024.

Peter A. White,

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

[FR Doc. 2024–20834 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–0992; Project Identifier MCAI–2024–00030–T; Amendment 39–22808; AD 2024–16–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2018–01–07, AD 2018–19–33, AD 2019–21–01, AD 2021–26–20, AD 2022–13–09, AD 2022–14–06, AD 2023–09–05, and AD 2023–26–06, which applied to all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and AD 2020–23–11, which applied to all Airbus SAS Model A300 and A300–600 series airplanes. AD 2018–01–07, AD 2018–19–33, AD 2019–21–01, AD 2021–26–20, AD 2022–13–09, AD 2022–14–06, AD 2023–09–05, and AD 2023–26–06 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2020–23–11 required repetitive inspections for discrepancies of certain areas in and around the fuselage and repair if necessary. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require certain actions specified in the superseded ADs, and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also removes the Model A300 series airplanes from the applicability. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 7, 2024 (89 FR 6411, February 1, 2024).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 11, 2023 (88 FR 36926, June 6, 2023).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 19, 2022 (87 FR 42318, July 15, 2022).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 9, 2022 (87 FR 39743, July 5, 2022).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 3, 2022 (87 FR 17939, March 29, 2022).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 4, 2021 (85 FR 75838, November 27, 2020).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 29, 2019 (84 FR 56935, October 24, 2019).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2024-0992; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

- For Airbus SAS material identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700

Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; website airbus.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at *regulations.gov* under Docket No. FAA-2024-0992.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3225; email: dan.rodina@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019-21-01, Amendment 39-19767 (84 FR 56935, October 24, 2019) (AD 2019-21-01). AD 2019-21-01 applied to all Airbus SAS Model A300-600 series airplanes. AD 2019-21-01 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued 2019-21-01 to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on April 5, 2024 (89 FR 23951). The NPRM was prompted by AD 2024-0009, dated January 9, 2024 (EASA AD 2024-0009) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require certain actions specified in AD 2019-21-01, and to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in EASA AD 2024-0009. The FAA is issuing 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-2024-0992.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association,

International (ALPA), who supported the NPRM without change.

The FAA received an additional comment from FedEx. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Terminate Additional ADs

FedEx requested that the FAA revise the proposed AD to allow accomplishment of the requirements to also terminate the requirements of AD 2020-23-11, Amendment 39-21327 (85 FR 75838, November 27, 2020) (AD 2020-23-11); AD 2021-26-20, Amendment 39-21879 (87 FR 17939, March 29, 2022) (AD 2021-26-20); AD 2022-13-09, Amendment 39-22095 (87 FR 39743, July 5, 2022) (AD 2022-13-09); AD 2022-14-06, Amendment 39-22111 (87 FR 42318, July 15, 2022) (AD 2022-14-06); AD 2023-09-05, Amendment 39-22428 (88 FR 36926, June 6, 2023) (AD 2023-09-05); and AD 2023-26-06, Amendment 39-22649 (89 FR 6411, February 1, 2024) (AD 2023-26-06).

FedEx stated that AD 2020-23-11, AD 2021-26-20, AD 2022-13-09, AD 2022-14-06, AD 2023-09-05, and AD 2023-26-06 require the incorporation of airworthiness limitations section (ALS) Part 2 Variations, which have all been incorporated into Airbus A300-600 ALS, Part 2, Revision 04, dated July 20, 2023, according to the "Revision Status" section of Revision 04. FedEx also stated that EASA AD 2024-0009 supersedes all the EASA ADs related to these additional FAA ADs.

The FAA agrees that the additional ADs require the incorporation of ALS Part 2 Variations, which have all been incorporated into ALS Part 2 Revision 04, dated July 20, 2023, and therefore, those ADs are terminated once Revision 04 has been incorporated into the existing maintenance or inspection program, as applicable. Therefore, the FAA is superseding AD 2019-21-01, AD 2020-23-11, AD 2021-26-20, AD 2022-13-09, AD 2022-14-06, AD 2023-09-05, and AD 2023-26-06, which correspond to the EASA ADs superseded by EASA AD 2024-0009. The FAA has determined superseding all affected ADs is a less burdensome approach than adding terminating action paragraphs to this AD for each of the additional ADs.

Additional Changes Made to This AD

Although the preamble of the NPRM stated that AD 2019-21-01 specified that accomplishing the revision required by that AD terminates all requirements of AD 2018-01-07, Amendment 39-19148 (83 FR 2042, January 16, 2018)

(AD 2018–01–07) and AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018) (AD 2018–19–33), and that the proposed AD would therefore continue to allow that terminating action, the proposed AD did not include terminating action for those ADs. This AD has been revised to supersede AD 2018–01–07 and AD 2018–19–33 and does not restate the requirements of those ADs; the actions required by those ADs have already been terminated by the requirements of AD 2019–21–01.

AD 2020–23–11 corresponds to EASA AD 2020–0110R1, dated May 27, 2020 (EASA AD 2020–0110R1) (for Model A300 series airplanes) and EASA AD 2020–0111R2, dated June 16, 2020 (for Model A300–600 series airplanes). EASA AD 2020–0110R1 has since been superseded by EASA AD 2024–0008, dated January 9, 2024 (EASA AD 2024–0008). There currently are no Model A300 series airplanes on the U.S. register. Therefore, the FAA has added EASA AD 2024–0008 to the required airworthiness actions list (RAAL) for the Model A300 series airplanes. Therefore, the FAA has not included the Model A300 series airplanes in this AD.

Paragraph (l) of the proposed AD specified that accomplishing the actions required by this AD terminates all requirements of AD 2019–21–01. However, AD 2019–21–01 is superseded by this AD and the actions are retained in paragraph (g) of this AD, which is terminated by the actions required by paragraph (dd) of this AD. Therefore, the FAA has not restated paragraph (l) of the proposed AD in this AD.

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0009. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2023–0091, dated May 5, 2023, which the Director of the Federal Register approved for incorporation by reference as of March 7, 2024 (89 FR 6411, February 1, 2024).

This AD also requires EASA AD 2022–0192, dated September 23, 2022, which the Director of the Federal Register approved for incorporation by reference as of July 11, 2023 (88 FR 36926, June 6, 2023).

This AD also requires EASA AD 2021–0258, dated November 17, 2021, which the Director of the Federal Register approved for incorporation by

reference as of August 19, 2022 (87 FR 42318, July 15, 2022).

This AD also requires EASA AD 2021–0204, dated September 14, 2021, which the Director of the Federal Register approved for incorporation by reference as of August 9, 2022 (87 FR 39743, July 5, 2022).

This AD also requires EASA AD 2021–0093, dated March 30, 2021, which the Director of the Federal Register approved for incorporation by reference as of May 3, 2022 (87 FR 17939, March 29, 2022).

This AD also requires EASA AD 2020–0111R2, dated June 16, 2020, which the Director of the Federal Register approved for incorporation by reference as of January 4, 2021 (85 FR 75838, November 27, 2020).

This AD also requires Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, “Damage Tolerant Airworthiness Limitation Items (DT–ALI),” Revision 03, dated December 14, 2018, which the Director of the Federal Register approved for incorporation by reference as of November 29, 2019 (84 FR 56935, October 24, 2019).

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.

Costs of Compliance

The FAA estimates that this AD affects 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the following costs to comply with retained actions from AD 2020–23–11:

ESTIMATED COSTS FROM AD 2020–23–11*

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–23–11	90 work-hours × \$85 per hour = \$7,650	\$0	\$7,650	\$918,000

* The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in AD 2020–23–11.

The FAA estimates the total cost per operator for the retained actions from AD 2019–21–01, AD 2021–26–20, AD 2022–13–09, AD 2022–14–06, AD 2023–09–05, and AD 2023–26–06 to be \$7,650 (90 work-hours × \$85 per work-hour) per AD.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their

affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII:

Aviation Programs, describes in more detail the scope of the Agency’s authority.

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

unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directives (AD) 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018); AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018); AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019); AD 2020–23–11, Amendment 39–21327 (85 FR 75838, November 27, 2020); AD 2021–26–20, Amendment 39–21879 (87 FR 17939, March 29, 2022); AD 2022–13–09, Amendment 39–22095 (87 FR 39743, July 5, 2022); AD 2022–14–06, Amendment 39–22111 (87 FR 42318, July 15, 2022); AD 2023–09–05, Amendment 39–22428 (88 FR 36926, June 6, 2023); and AD 2023–26–06, Amendment 39–22649 (89 FR 6411, February 1, 2024); and
- b. Adding the following new AD:

2024–16–02 Airbus SAS: Amendment 39–22808; Docket No. FAA–2024–0992; Project Identifier MCAI–2024–00030–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 21, 2024.

(b) Affected ADs

This AD replaces the ADs specified in paragraphs (b)(1) through (9) of this AD.

- (1) AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018).
- (2) AD 2018–19–33, Amendment 39–19434 (83 FR 48932, September 28, 2018).
- (3) AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019) (AD 2019–21–01).
- (4) AD 2020–23–11, Amendment 39–21327 (85 FR 75838, November 27, 2020) (AD 2020–23–11).
- (5) AD 2021–26–20, Amendment 39–21879 (87 FR 17939, March 29, 2022) (AD 2021–26–20).
- (6) AD 2022–13–09, Amendment 39–22095 (87 FR 39743, July 5, 2022) (AD 2022–13–09).
- (7) AD 2022–14–06, Amendment 39–22111 (87 FR 42318, July 15, 2022) (AD 2022–14–06).
- (8) AD 2023–09–05, Amendment 39–22428 (88 FR 36926, June 6, 2023) (AD 2023–09–05).
- (9) AD 2023–26–06, Amendment 39–22649 (89 FR 6411, February 1, 2024) (AD 2023–26–06).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

- (1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.
- (2) Model A300 B4–605R and B4–622R airplanes.
- (3) Model A300 C4–605R Variant F airplanes.
- (4) Model A300 F4–605R and F4–622R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program From AD 2019–21–01, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–21–01, with no changes. Within 90 days after November 29, 2019 (the effective date of AD 2019–21–01), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A300–600 Airworthiness Limitations Section (ALS),

Part 2, “Damage Tolerant Airworthiness Limitation Items (DT–ALI),” Revision 03, dated December 14, 2018. The initial compliance time for doing the tasks is at the time specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, “Damage Tolerant Airworthiness Limitation Items (DT–ALI),” Revision 03, dated December 14, 2018, or within 90 days after November 29, 2019, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(h) Retained Restrictions on Alternative Actions or Intervals From AD 2019–21–01, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–21–01, with a new exception. Except as required by paragraphs (k), (o), (s), (v), (z), and (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (gg)(1) of this AD.

(i) Retained Requirements From AD 2020–23–11, With a New Exception

This paragraph restates the requirements of paragraph (g)(2) of AD 2020–23–11, with a new exception. Except as specified in paragraph (j) of this AD, and except as required by paragraph (k) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0111R2, dated June 16, 2020 (EASA AD 2020–0111R2). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(j) Retained Exceptions to EASA AD 2020–0111R2, With Revised References

This paragraph restates the exceptions specified in paragraphs (h)(2) and (3) of AD 2020–23–11, with revised references.

- (1) Where paragraph (4) of EASA AD 2020–0111R2 refers to June 3, 2020 (“the effective date of this [EASA] AD at original issue”), this AD requires using January 4, 2021 (the effective date of AD 2020–23–11).
- (2) The “Remarks” section of EASA AD 2020–0111R2 does not apply to this AD.

(k) Retained Requirements From AD 2021–26–20, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–26–20, with no changes. Except as specified in paragraph (l) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0093, dated March 30, 2021 (EASA AD 2021–0093). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(l) Retained Exceptions to EASA AD 2021–0093, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2021–26–20, with no changes.

(1) Where EASA AD 2021–0093 refers to its effective date, this AD requires using May 3, 2022 (the effective date of AD 2021–26–20).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0093 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0093 specifies revising “the approved AMP [aircraft maintenance program]” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable within 90 days after May 3, 2022 (the effective date of AD 2021–26–20).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0093 is at the applicable “thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2021–0093, or within 90 days after May 3, 2022 (the effective date of AD 2021–26–20), whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0093 do not apply to this AD.

(6) The “Remarks” section of EASA AD 2021–0093 does not apply to this AD.

(m) Retained Provisions From AD 2021–26–20, With a New Exception

This paragraph restates the provisions specified in paragraph (i) of AD 2021–26–20, with a new exception. Except as required by paragraph (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (k) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2021–0093.

(n) Retained Terminating Action From AD 2021–26–20, With No Changes

This paragraph restates the terminating action specified in paragraph (j) of AD 2021–26–20, with no changes.

(1) Accomplishing the actions required by paragraph (k) of this AD terminates the corresponding requirements of paragraph (g) of this AD, for the tasks identified in the service information referred to in EASA AD 2021–0093 only.

(2) Accomplishing the actions required by paragraph (k) of this AD terminates the corresponding requirements of paragraph (i) of this AD, for the tasks identified in the service information referred to in EASA AD 2021–0093 only.

(o) Retained Requirements From AD 2022–13–09, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–13–09, with no changes. Except as specified in paragraph (p) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0204, dated September 14, 2021 (EASA AD 2021–0204). Accomplishing the revision of the existing maintenance or inspection program

required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(p) Retained Exceptions to EASA AD 2021–0204, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2022–23–09, with no changes.

(1) Where EASA AD 2021–0204 refers to its effective date, this AD requires using August 9, 2022 (the effective date of AD 2022–13–09).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0204 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0204 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after August 9, 2022 (the effective date of AD 2022–13–09).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0204 is at the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2021–0204, or within 90 days after August 9, 2022 (the effective date of AD 2022–13–09), whichever occurs later.

(5) The provisions specified in paragraphs (4) of EASA AD 2021–0204 do not apply to this AD.

(6) The “Remarks” section of EASA AD 2021–0204 does not apply to this AD.

(q) Retained Provisions From AD 2022–13–09, With a New Exception

This paragraph restates the provisions specified in paragraph (i) of AD 2022–13–09, with a new exception. Except as required by paragraph (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (o) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2021–0204.

(r) Retained Terminating Action From AD 2022–13–09 With No Changes

This paragraph restates the terminating action specified in paragraph (j) of AD 2021–26–20, with no changes. Accomplishing the actions required by paragraph (o) of this AD terminates the corresponding requirements of paragraph (g) of this AD, for the tasks identified in the service information referred to in EASA AD 2021–0204 only.

(s) Retained Requirements From AD 2022–14–06, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–14–06, with no changes. Except as specified in paragraph (t) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0258, dated November 17, 2021 (EASA AD 2021–0258). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(t) Retained Exceptions to EASA AD 2021–0258, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2022–14–06, with no changes.

(1) Where EASA AD 2021–0258 refers to its effective date, this AD requires using August 19, 2022 (the effective date of AD 2022–14–06).

(2) Where paragraph (1) of EASA AD 2021–0258 specifies “This AD invalidates the LOV [limit of validity] as specified in Airbus A300–600 ALS Part 2 Revision 03 [EASA AD 2019–0090],” this AD replaces the LOVs specified in paragraph 3.1 of Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, “Damage Tolerant Airworthiness Limitation Items (DT–ALI),” Revision 03, dated December 14, 2018, as required by paragraph (g) of this AD.

(3) Paragraph (2) of EASA AD 2021–0258 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after August 19, 2022 (the effective date of AD 2022–14–06).

(4) The “Remarks” section of EASA AD 2021–0258 does not apply to this AD.

(u) Retained Provisions From AD 2022–14–06, With a New Exception

This paragraph restates the provisions specified in paragraph (i) of AD 2022–14–06, with a new exception. Except as required by paragraph (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (s) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2021–0258.

(v) Retained Requirements From AD 2023–09–05, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2023–09–05, with no changes. Except as specified in paragraph (w) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0192, dated September 23, 2022 (EASA AD 2022–0192). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(w) Retained Exceptions to EASA AD 2022–0192, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2023–09–05, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0192.

(2) Paragraph (3) of EASA AD 2022–0192 specifies revising “the AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after July 11, 2023 (the effective date of AD 2023–09–05).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA

2022–0192 is at the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0192, or within 90 days after July 11, 2023 (the effective date of AD 2023–09–05), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2022–0192.

(5) This AD does not adopt the “Remarks” section of EASA AD 2022–0192.

(x) Retained Provisions From AD 2023–09–05, With a New Exception

This paragraph restates the provisions specified in paragraph (i) of AD 2023–09–05, with a new exception. Except as required by paragraph (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (v) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0192.

(y) Retained Terminating Action From AD 2023–09–05, With No Changes

This paragraph restates the terminating action specified in paragraph (j) of AD 2023–09–05, with no changes. Accomplishing the actions required by paragraph (v) of this AD terminates the corresponding requirements of paragraph (g) of this AD for the tasks identified in the service information referred to in EASA AD 2022–0192 only.

(z) Retained Requirements From AD 2023–26–06, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2023–26–06, with no changes. Except as specified in paragraph (aa) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0091, dated May 5, 2023 (EASA AD 2023–0091). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (dd) of this AD terminates the requirements of this paragraph.

(aa) Retained Exceptions to EASA AD 2023–0091, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2023–26–06, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0091.

(2) Where paragraph (3) of EASA AD 2023–0091 specifies “Within 12 months after the effective date of this AD, revise the AMP,” this AD requires replacing those words with “Within 90 days after March 7, 2024 (the effective date of AD 2023–26–06), revise the existing maintenance or inspection program, as applicable.”

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0091 is at the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0091, or within 90 days after March 7, 2024 (the effective date of AD 2023–26–06), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2023–0091.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0091.

(bb) Retained Provisions From AD 2023–26–06, With a New Exception

This paragraph restates the provisions specified in paragraph (i) of AD 2023–26–06, with a new exception. Except as required by paragraph (dd) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (z) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0091.

(cc) Retained Terminating Action From AD 2023–26–06, With a Revised Reference

This paragraph restates the terminating action specified in paragraph (j) of AD 2023–26–06, with a revised reference. Accomplishing the actions required by paragraph (z) of this AD terminates the corresponding requirements of paragraph (g) of this AD for the tasks identified in the service information referenced in EASA AD 2023–0091 only.

(dd) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (ee) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0009, dated January 9, 2024 (EASA AD 2024–0009). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g), (i), (k), (o), (s), (v), and (z) of this AD.

(ee) Exceptions to EASA AD 2024–0009

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0009.

(2) Paragraph (4) of EASA AD 2024–0009 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2024–0009 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (4) of EASA AD 2024–0009, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (5) and (6) of EASA AD 2024–0009.

(5) This AD does not adopt the “Remarks” section of EASA AD 2024–0009.

(6) Where EASA AD 2024–0009 refers to its effective date, this AD requires using the effective date of this AD.

(ff) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as

required by paragraph (dd) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2024–0009.

(gg) 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 (hh) 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 Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: Except as required by paragraph (gg)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(hh) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3225; email: dan.rodina@faa.gov.

(ii) 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.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0009, dated January 9, 2024.

(ii) [Reserved]

(4) The following material was approved for IBR on March 7, 2024 (89 FR 6411, February 1, 2024).

(i) EASA AD 2023–0091, dated May 5, 2023.

(ii) [Reserved]

(5) The following material was approved for IBR on July 11, 2023 (88 FR 36926, June 6, 2023).

(i) EASA AD 2022–0192, dated September 23, 2022.

(ii) [Reserved]

(6) The following material was approved for IBR on August 19, 2022 (87 FR 42318, July 15, 2022).

(i) EASA AD 2021–0258, dated November 17, 2021.

(ii) [Reserved]

(7) The following material was approved for IBR on August 9, 2022 (87 FR 39743, July 5, 2022).

(i) EASA AD 2021–0204, dated September 14, 2021.

(ii) [Reserved]

(8) The following material was approved for IBR on May 3, 2022 (87 FR 17939, March 29, 2022).

(i) EASA AD 2021–0093, dated March 30, 2021.

(ii) [Reserved]

(9) The following material was approved for IBR on January 4, 2021 (85 FR 75838, November 27, 2020).

(i) EASA AD 2020–0111R2, dated June 16, 2020.

(ii) [Reserved]

(10) The following material was approved for IBR on November 29, 2019 (84 FR 56935, October 24, 2019).

(i) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, “Damage Tolerant Airworthiness Limitation Items (DT–ALI),” Revision 03, dated December 14, 2018.

(ii) [Reserved]

(11) For EASA ADs 2020–0111R2, 2021–0093, 2021–0204, 2021–0258, 2022–0192, 2023–0091, and 2024–0009, 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 these EASA ADs on the EASA website at ad.easa.europa.eu.

(12) For Airbus SAS material identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; website airbus.com.

(13) You may view this material that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(14) 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 July 30, 2024.

Peter A. White,

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

[FR Doc. 2024–20835 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1291; Project Identifier MCAI–2022–00901–R; Amendment 39–22811; AD 2024–16–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model SA330J helicopters. This AD was prompted by a report of a main rotor gearbox (MGB) flange assembly coupling (coupling) that was incorrectly assembled. This AD requires a one-time visual inspection to determine correct assembly of each sliding flange installed on each MGB coupling, and if necessary, further corrective actions. This AD also prohibits installing certain MGB couplings or any MGB equipped with certain MGB couplings on any helicopter. These requirements are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1291; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2024–1291.

Other Related Service Information:

For Airbus Helicopters material, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at airbus.com/en/products-services/helicopters/hcare-services/airbusworld.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aviation Safety Engineer, FAA; 3960 Paramount Boulevard, Lakewood, CA 90712; telephone (303) 342–1080; email hal.jensen@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0140, dated July 7, 2022 (EASA AD 2022–0140), to correct an unsafe condition on Airbus Helicopters Model SA 330 J helicopters, all serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model SA330J helicopters, certificated in any category. The NPRM published in the **Federal Register** on May 15, 2024 (89 FR 42397). The NPRM was prompted by a report of an incorrectly assembled MGB coupling part number (P/N) 330A32–9392–01 which was installed in the reverse position, deviating from the assembly instructions.

In the NPRM, the FAA proposed to require accomplishing the actions specified in EASA AD 2022–0140, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under “Differences Between this AD and the EASA AD.” This condition, which if not addressed, could lead to loss of the drive transmission from the left-hand or right-hand engine, and subsequent loss of control of the helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine EASA AD 2022–0140 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1291.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2022–0140 requires a one-time inspection of the left-hand and right-hand MGB coupling P/N 330A32–9392–01 for correct assembly. If any MGB coupling is incorrectly assembled, EASA AD 2022–0140 requires replacing an affected MGB coupling with a serviceable MGB coupling. EASA AD 2022–0140 also prohibits installing an affected MGB coupling or an MGB equipped with an affected coupling installed, on any helicopter unless it has passed inspection requirements.

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

Other Related Material

The FAA also reviewed Airbus Helicopters Alert Service Bulletin No. SA330–65.140, Revision 0, dated June 30, 2022, which specifies procedures for inspecting the assembly of the MGB coupling by ensuring the sliding flange is correctly assembled and there is no presence of embossments. This material also specifies procedures for replacing an affected MGB coupling with a correctly assembled MGB coupling and instructions to send affected parts to Airbus Helicopters.

Differences Between This AD and the EASA AD

If any incorrectly assembled MGB coupling is found during the inspection, EASA AD 2022–0140 requires replacing each affected part with a serviceable part, whereas this AD requires removing each affected part from service and

replacing it with a serviceable part, as defined in EASA AD 2022–0140.

Service information referenced in EASA AD 2022–0140 specifies reporting certain information and sending affected parts to Airbus Helicopters, whereas this AD does not require sending information or parts to Airbus Helicopters.

Costs of Compliance

The FAA estimates that this AD affects 7 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting each MGB coupling will take approximately 4 work-hours for an estimated cost of \$340 per helicopter and up to \$2,380 for the U.S. fleet.

If required, removing and replacing the MGB coupling will take approximately 8 work-hours and parts will cost approximately \$23,215 for an estimated cost of \$23,895 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–16–05 Airbus Helicopters:

Amendment 39–22811; Docket No. FAA–2024–1291; Project Identifier MCAI–2022–00901–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 21, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model SA330J helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6320, Main rotor gearbox.

(e) Unsafe Condition

This AD was prompted by a report of an incorrectly assembled main rotor gearbox (MGB) flange assembly coupling (coupling). The FAA is issuing this AD to detect and address incorrectly assembled MGB couplings. The unsafe condition, if not addressed, could result in loss of the drive transmission from the left-hand or right-hand engine, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0140, dated July 7, 2022 (EASA AD 2022–0140).

(h) Exceptions to EASA AD 2022–0140

(1) Where EASA AD 2022–0140 requires compliance in terms of flight hours, this AD, requires using hours time-in-service.

(2) Where EASA AD 2022–0140 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2022–0140 states, “in accordance with the instructions of the ASB,” for this AD, replace that text with “in accordance with the Accomplishment Instructions, paragraph 3.B.2.b. of the ASB, except you are not required to comply with paragraph 3.B.2.c.”

(4) Where paragraph (2) of EASA AD 2022–0140 states to “replace the affected part with a serviceable part, in accordance with the instructions of the ASB” for this AD, replace that text with “remove the affected part, as defined in EASA AD 2022–0140, from service and replace it with a serviceable part, as defined in EASA AD 2022–0140, in accordance with the Accomplishment Instructions, paragraph 3.B.2.d. of the ASB, except you are not required to send an affected part to Airbus Helicopters or comply with paragraphs 2.D or 3.B.3 of the ASB.”

(5) Where the service information referenced in EASA AD 2022–0140 specifies “install a flange assy coupling (1) correctly assembled,” for this AD, replace that text with “install a correctly assembled MGB coupling.”

(6) This AD does not adopt the “Remarks” section of EASA AD 2022–0140.

(i) No Reporting or Return of Parts

Although the service information referenced in EASA AD 2022–0140 specifies to submit certain information and return parts to the manufacturer, this AD does not require those actions.

(j) Special Flight Permits

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 in order to fly to a maintenance area to perform the required actions in this AD, provided there are no passengers onboard.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Hal Jensen, Aviation Safety Engineer, FAA; 3960 Paramount Boulevard, Lakewood, CA 90712; telephone (303) 342–1080; email hal.jensen@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0140, dated July 7, 2022.

(ii) [Reserved]

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

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

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

Issued on September 10, 2024.

Victor Wicklund,

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

[FR Doc. 2024–20844 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–2238; Project Identifier MCAI–2023–00698–R; Amendment 39–22803; AD 2024–15–11]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model A109C, A109E, A109K2, A109S, and AW109SP helicopters. This AD was prompted by reports of loose tail rotor duplex bearing locking nuts, possibly caused by improper installation. This AD requires disassembling certain tail rotor duplex bearings and reassembling them in accordance with updated procedures. This AD also prohibits installing certain tail rotor duplex bearing housings and pitch change slider assemblies. These actions are specified in a European Union Aviation Safety Agency (EASA)

AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 21, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–2238; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2023–2238.

FOR FURTHER INFORMATION CONTACT:

William McCully, Aviation Safety Engineer, FAA, International Validation Branch, FAA, 1600 Stewart Ave. Suite 410, Westbury, NY 11590; phone: (404) 474–5548; email: william.mccully@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0105, dated May 23, 2023 (EASA AD 2023–0105), to correct an unsafe condition on Leonardo S.p.a. Model A109C, A109E, A109K2, A109LUH, A109S, and AW109SP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model A109C, A109E, A109K2, A109S, and AW109SP helicopters. The NPRM published in the **Federal Register** on December 11, 2023 (88 FR 85856). The

NPRM was prompted by reports of loose tail rotor duplex bearing locking nuts. Investigations identified incorrect accomplishment of the assembly and continued maintenance instructions of the tail rotor duplex bearing housing and slider group as the most likely root cause of that loosening. Accordingly, the NPRM proposed to require disassembling certain tail rotor duplex bearing housings and pitch change slider assemblies and reassembling them in accordance with updated procedures. The NPRM also proposed to prohibit installing certain tail rotor duplex bearing housings and pitch change slider assemblies. These actions are specified in EASA AD 2023–0105.

The FAA is issuing this AD to detect and address the incorrect assembly of the tail rotor duplex bearing. This unsafe condition, if not addressed, could lead to failure of the tail rotor function, possibly resulting in loss of control of the helicopter. See EASA AD 2023–0105 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, Air Methods. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comments Regarding Compliance With Updated Maintenance Procedures

Air Methods commented that, upon review of the ASB [alert service bulletin] and the existing MM [maintenance manual], changes to the MM appear to be relatively minor between the existing MM procedures and the updated maintenance procedures (defined in EASA AD 2023–0105 as “the updated procedure” and that are included in the alert service bulletins¹ that are referenced for compliance). Air Methods also requested the FAA to advise of the reasoning behind the proposed AD requirement when the maintenance

procedures should get updated to accurately reflect the new work steps and this area has a 180-day recurrent inspection.

The FAA infers that Air Methods is requesting justification of the proposed requirement in the NPRM to replace an affected part, as defined in EASA AD 2023–0105, with a serviceable part, as defined in EASA AD 2023–0105, which may be done by following certain maintenance procedures to disassemble the affected part and updated maintenance procedures to reassemble the affected part, instead of allowing for accomplishment of anticipated updated maintenance procedures to address the unsafe condition without an AD. The FAA cannot require a manufacturer to revise its maintenance publications and, operators are subject to the specific manufacturer's maintenance procedures at time of delivery, which may vary. Therefore, to mandate specific procedures when an unsafe condition has been determined, the FAA must issue an AD to address and correct that unsafe condition. Lastly, compliance times in AD actions commonly specify multiple compliance time units to capture varying usage of the fleet and various factors related to the unsafe condition. The compliance time proposed by the NPRM to accomplish the replacement is within 100 hours time-in-service or 6 months, whichever occurs first. The purpose of the “within 100 hours time-in-service” compliance time unit is to capture high usage helicopters, which have an increased likelihood of occurrence of a failure, that a 180-day compliance time alone would not capture to an acceptable level of safety.

Comments Regarding Compliance With Future Revisions of the Updated Maintenance Procedures

Air Methods stated that there are three levels of documents to comply with to accomplish the proposed AD; EASA AD 2023–0105, the ASB [alert service bulletins] (that are referred to as “the ASB” and referenced in EASA AD 2023–0105 for compliance), and MM [maintenance manual] (particularly, maintenance procedures, that are referenced in the alert service bulletins for compliance and are normally available in maintenance publications). Air Methods also stated that the proposed AD does not address future revisions of the updated maintenance procedures identified in EASA AD 2023–0105 (defined in EASA AD 2023–0105 as “the updated procedure”) and the alert service bulletins.

The NPRM proposed to require accomplishing the required actions and

compliance times specified in EASA AD 2023–0105 with certain exceptions. Through that incorporation, the NPRM proposed to allow using future revisions of the maintenance procedures because EASA AD 2023–0105 defines “the updated procedure” by identifying certain revisions of the maintenance procedures for the applicable model helicopters and explicitly states “or later revisions;” and, the NPRM did not propose an exception to prohibit using later revisions of the updated maintenance procedures. The NPRM did not propose compliance with part II of the alert service bulletins.

Air Methods asked if the FAA intends to require an AD logbook signoff each time this area is disassembled/reassembled after the initial task compliance. Air Methods also asked if the signoff with the “the updated procedure” as identified in EASA AD 2023–0105, or later, is sufficient for future maintenance as it is impossible to forecast unplanned maintenance and the current version of the maintenance procedures would be used for this maintenance.

The requirements proposed in the NPRM do not require an AD logbook signoff each time the tail rotor duplex bearing housing or pitch change slider assembly are disassembled and reassembled. The NPRM proposed to require a one-time replacement, and compliance must be entered into the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v) for that one-time replacement. Thereafter, the NPRM proposed to prohibit installing any tail rotor duplex bearing housing part number (P/N) 109–0130–94–XXX and any pitch change slider assembly P/N 109–0130–91–XXX (with “XXX” representing any numerical sequence) that has been disassembled and (re)assembled in service using maintenance procedures issued prior to the updated procedure, as defined in EASA AD 2023–0105. There is no logbook entry for part installation prohibitions because the identified parts must not be installed on any helicopters.

Additional Changes Since the NPRM Was Issued

Since the FAA issued the NPRM, two errors in EASA AD 2023–0105 have been identified. EASA AD 2023–0105 inadvertently omits “MM Paragraph 64–31–6 Rev. 6” (for certain serial-numbered Model A109K2 helicopters) in its definition of “the updated procedure” and inadvertently identifies the updated procedures as “(as referenced in Annex A of the ASB).”

¹ Leonardo Helicopters Alert Service Bulletin (ASB) No. 109–158, ASB No. 109EP–180, ASB No. 109K–076, ASB No. 109S–115, and ASB No. 109SP–154, each dated March 21, 2023, contain updated maintenance procedures (referenced as “Annex A” or “Annex B” in the ASBs, as applicable) for assembling the tail rotor housing and slider assembly. The updated maintenance procedures are MM Paragraph 64–30–3 Revision 5, MM Paragraph 64–31–6 Revision 16, MM Paragraph 64–30–5 Revision 5, MM Paragraph 64–31–6 Rev. 6, and AMP DM 0B–A–64–31–06–00A–710A–B Issue 13, as applicable. The identified ASBs are referenced in EASA AD 2023–0105 for compliance and will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–2238 after this FAA final rule is published.

The FAA is correcting the omission by adding an exception to revise the definition of “the updated procedure” and is correcting the misidentification by adding an exception to replace that text with “(as referenced in Annex A or B of the ASB, as applicable).” These corrections are relieving as they reduce the population of “affected parts” as defined in EASA AD 2023–0105.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for the changes described previously and minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

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

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

Differences Between This AD and the EASA

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

Costs of Compliance

The FAA estimates that this AD affects 160 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–15–11 Leonardo S.p.a.: Amendment 39–22803; Docket No. FAA–2023–2238; Project Identifier MCAI–2023–00698–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 21, 2024.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0105, dated May 23, 2023 (EASA AD 2023–0105).

(h) Exceptions to EASA AD 2023–0105

(1) Where EASA AD 2023–0105 defines the updated procedure as “Paragraph 64–30–3 Rev. 5 (for A109C helicopters), MM Paragraph 64–31–6 Rev. 16 (for A109E helicopters), MM Paragraph 64–30–5 Rev. 5 (for A109K2 helicopters), AM DM 64–31–10–00A–710A–B Issue 13 (for A109LUH helicopters) or AMP DM 0B–A–64–31–06–00A–710A–B Issue 13 (for A109S and AW109SP helicopters), as applicable, or later revisions;” for this AD, replace that text with “Paragraph 64–30–3 Rev. 5 (for A109C helicopters), MM Paragraph 64–31–6 Rev. 16 (for A109E helicopters), MM Paragraph 64–30–5 Rev. 5 or MM Paragraph 64–31–6 Rev. 6, as applicable (for A109K2 helicopters), or AMP DM 0B–A–64–31–06–00A–710A–B Issue 13 (for A109S and AW109SP helicopters), as applicable, or later revisions.”

(2) Where EASA AD 2023–0105 states “Annex A of the ASB;” for this AD, replace that text with “Annex A or B of the ASB, as applicable.”

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

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

(5) Where the material referenced in EASA AD 2023–0105 specifies to “discard” parts; for this AD, replace that text with “remove from service.”

(6) This AD does not adopt the “Remarks” section of EASA AD 2023–0105.

(i) No Reporting Requirement

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

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact William McCully, Aviation Safety Engineer, FAA, International Validation Branch, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (404) 474–5548; email: william.mccully@faa.gov.

(l) Material Incorporated by Reference

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

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

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

(ii) [Reserved]

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

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

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

Issued on September 10, 2024.

Victor Wicklund,

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

[FR Doc. 2024–20969 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31564; Amdt. No. 4129]

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 September 16, 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 September 16, 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, Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, 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 August 30, 2024.

Thomas J. Nichols,

Standards Section Manager, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Office of Safety Standards, Flight Standards Service, Aviation Safety, Federal Aviation Administration.

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 3 October 2024

Lakeland, FL, KLAL, RNAV (GPS) Y RWY 28, Orig
Lakeland, FL, KLAL, RNAV (RNP) Z RWY 28, Orig

Effective 31 October 2024

Shungnak, AK, SHG/PAGH, RNAV (GPS) RWY 28, Amdt 4
Shungnak, AK, PAGH, Takeoff Minimums and Obstacle DP, Amdt 2
Shungnak, AK, PAGH, TOMPY ONE, Graphic DP
San Francisco, CA, SFO, RNAV (GPS) Z RWY 28R, Amdt 8
Atlanta, GA, ATL, RNAV (GPS) RWY 8R, Amdt 5
Sandersville, GA, OKZ, RNAV (GPS) RWY 13, Amdt 3A
Grayling, MI, GOV, NDB RWY 14, Amdt 9

Jefferson City, MO, JEF, ILS OR LOC RWY 30, Amdt 7
Jefferson City, MO, JEF, RNAV (GPS) RWY 12, Amdt 1C
Jefferson City, MO, JEF, RNAV (GPS) RWY 30, Orig-C
Reidsville, NC, SIF, RNAV (GPS) RWY 13, Amdt 1
Reidsville, NC, SIF, RNAV (GPS) RWY 31, Amdt 1
Reidsville, NC, KSIF, Takeoff Minimums and Obstacle DP, Amdt 4
Broken Bow, NE, BBW, RNAV (GPS) RWY 14, Orig-C
Follett, TX, T93, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Fort Worth, TX, 50F, RNAV (GPS) RWY 17, Amdt 1
Fort Worth, TX, 50F, RNAV (GPS) RWY 35, Amdt 3
Lago Vista, TX, RYW, RNAV (GPS) RWY 15, Amdt 1A
Navasota, TX, 60R, RNAV (GPS) RWY 17, Amdt 1
Navasota, TX, 60R, RNAV (GPS) RWY 35, Amdt 1
San Antonio, TX, KSAT, Takeoff Minimums and Obstacle DP, Amdt 1B
Abingdon, VA, VJI, LOC RWY 24, Amdt 6
Abingdon, VA, VJI, RNAV (GPS) RWY 6, Amdt 2
Abingdon, VA, VJI, RNAV (GPS) RWY 24, Amdt 3
Abingdon, VA, KVJI, Takeoff Minimums and Obstacle DP, Amdt 4

[FR Doc. 2024–20810 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

Addition of Entities to the Entity List

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2024, in supplement number 4 to part 744, in the table, under NETHERLANDS, restore the entry for “Kapil Raj Arora”, and under PAKISTAN, restore the entry for “Orion Eleven Pvt. Ltd.”, to read as set forth below:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	Federal Register citation
NETHERLANDS	Kapil Raj Arora, Breukelsestraat 44, 2574 RC, The Hague, Netherlands; and Knobbelswaansingel 19, 2496 LN, The Hague, Netherlands.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	81 FR 14958, 3/21/16.
PAKISTAN	Orion Eleven Pvt. Ltd., Street 11 Valley Road, Westridge Rawalpindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR 56003, 9/18/14.

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[FR Doc. 2024–21109 Filed 9–13–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 764 and 766**

[Docket No. 240911–0236]

RIN 0694–AJ84

Administrative and Enforcement Provisions**AGENCY:** Bureau of Industry and Security, Department of Commerce.**ACTION:** Final rule.

SUMMARY: With this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by making certain revisions and clarifications. This final rule revises provisions related to the voluntary self-disclosure process for exporters who believe that they may have violated the EAR, or any order, license or authorization issued thereunder. This final rule also provides clarified guidance on charging and penalty determinations in settlement of administrative enforcement cases.

DATES: This rule is effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Tracy Martin, Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–1208 or by email: Tracy.Martin@bis.doc.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

With this rule BIS revises § 764.5 of the EAR regarding the procedures for submitting voluntary self-disclosures (VSDs) and supplement No. 1 to part 766, which includes guidance on charging and penalty determinations in

settlement of administrative enforcement cases. As discussed in more detail below, these revisions implement certain policies related to the VSD process that BIS has announced in policy memoranda since 2022, and also makes changes to how BIS calculates penalties in administrative cases.

1. Relevant Statutory Authority and Regulatory Framework

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). Section 1760(c) of ECRA (50 U.S.C. 4819(c)) authorizes the Secretary of Commerce (Secretary) to impose civil penalties for violations of ECRA, its implementing regulations, or any order or license issued thereunder. Specifically, ECRA authorizes the Secretary to impose the following civil penalties for each violation:

(A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

(B) Revocation of a license issued under [ECRA] to the person.

(C) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under [ECRA].

50 U.S.C. 4819(c)(1). The amount of the maximum civil penalty per violation under ECRA is subject to adjustment under the Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) and is currently \$364,992. See 15 CFR 6.3(c)(6). Within these limits, 50 U.S.C. 4819(c)(3) authorizes the Secretary to issue regulations to “provide standards for establishing levels of civil penalty . . . based upon factors such as the seriousness of the violation, the culpability of the violator, and such mitigating factors as the violator’s

record of cooperation with the Government in disclosing the violation.” The Secretary’s authority under ECRA is delegated to BIS (see section 1781 of ECRA, 50 U.S.C. 4851) and is implemented through the EAR.

Consistent with these authorities, BIS has implemented regulations providing standards for establishing levels of civil penalties in supplement No. 1 to part 766, titled “Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases” (“BIS Penalty Guidelines”). Last revised in the rule entitled “Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases” published in the **Federal Register** on June 22, 2016 (81 FR 40506), the BIS Penalty Guidelines describe how BIS’s Office of Export Enforcement (OEE), the organizational unit of BIS that is responsible for enforcing the provisions of the EAR, makes penalty determinations in administrative enforcement cases. The BIS Penalty Guidelines describe various factors—including aggravating, general, and mitigating factors—that OEE will consider in determining how to respond to apparent export violations in administrative cases. Specifically, the BIS Penalty Guidelines outline how OEE calculates monetary penalties for a particular violation, which includes determination of the relevant base penalty, and how the various aggravating, general, and mitigating factors justify an upward or downward departure from that base penalty. As discussed in the BIS Penalty Guidelines, the presence of significant aggravating factors may lead OEE to consider the conduct to be egregious, which may result in considerably higher monetary penalties. Conversely, the presence of significant mitigating factors may result in a lower monetary penalty.

One factor given significant weight in the BIS Penalty Guidelines is whether a party submitted a VSD regarding the violation. BIS encourages parties who

may have violated the EAR to submit a VSD and views VSDs as a strong indication of a party's commitment to U.S. export control compliance. Section 764.5 of the EAR establishes BIS's general policy and procedures for disclosing potential violations of ECRA and the EAR to BIS. Specifically, BIS encourages the submission of a VSD if a potential violation of the EAR is discovered.

2. BIS Enforcement Policy Memoranda

Beginning in 2022, BIS issued a series of publicly available memoranda describing policy changes to strengthen its administrative enforcement program and to encourage companies, universities, and individuals to submit VSDs. Such disclosures can provide BIS with helpful information from industry about export compliance practices, as well as information about other potential violations. These memoranda include the following: (1) "Further Strengthening Our Administrative Enforcement Program," dated June 30, 2022 (<https://www.bis.gov/sites/default/files/files/Administrative%20Enforcement%20Memo.pdf>) (the "2022 Policy Memorandum"); (2) "Clarifying Our Policy Regarding Voluntary Self-Disclosures and Disclosures Concerning Others," dated April 18, 2023 (<https://www.bis.gov/sites/default/files/files/VSD%20Policy%20Memo%20%2804.18.2023%29.pdf>) (the "2023 Policy Memorandum"); and (3) "Further Enhancements to Our Voluntary Self-Disclosure Process," dated January 16, 2024 (<https://www.bis.gov/sites/default/files/files/VSD%20MEMO.pdf>) (the "2024 Policy Memorandum") (collectively, the "Policy Memoranda"). The Policy Memoranda emphasize the importance of administrative enforcement measures to mitigate the threat that sensitive technologies will fall into adversarial hands and focus on the deterrent effect of imposing significantly higher penalties for egregious violations that affect national security. So that OEE can focus its limited resources on more serious cases, the Policy Memoranda also highlight OEE's desire to resolve less serious violations as quickly as possible—with lower penalties or no penalty where appropriate—and announce new policies making it easier to submit disclosures and expanding the beneficial effect of submitting a VSD.

Policy changes that were announced in the Policy Memoranda include: (1) the establishment of a "fast track" disclosure process for minor or technical violations and allowing for companies to submit an abbreviated narrative account in connection with

such disclosures that contains less detail than required by § 764.5; (2) the availability of electronic submission of VSDs via email; (3) using non-monetary penalties to resolve cases that are not egregious and have not resulted in national security harm, but rise above the level of cases warranting a warning letter; (4) clarifying that OEE will consider it an aggravating factor for purposes of determining a potential penalty if a party identifies that it committed a possible violation and then chooses not to disclose it; and (5) clarifying and simplifying BIS's process for handling requests to take corrective action for unlawfully exported items at issue in a VSD that would otherwise be prohibited by § 764.2(e).

The substance of the Policy Memoranda and their codification into regulations are firmly within the statutory authority granted by section 1760(c) of ECRA (50 U.S.C. 4819(c)). The Policy Memoranda were developed in accordance with the legislative framework, which empowers the Secretary to implement and enforce policies in this area. By translating these memoranda into formal regulations, BIS can ensure that the directives are legally binding and consistent with the legislative intent, thereby enhancing their effectiveness and enforceability while adhering to the statutory requirements.

B. Purpose of This Final Rule

The primary purpose of this final rule is twofold: first, to incorporate into the EAR the various policies announced in the Policy Memoranda, which are designed to encourage industry and academia to submit VSDs and to provide for efficient resolution of cases involving less serious violations, and second, to revise the BIS Penalty Guidelines to change how OEE calculates the base penalty in administrative cases, and how it applies various factors to the base penalty to determine the final penalty.

With respect to the changes implementing the elements of the Policy Memoranda, BIS is revising § 764.5 (regarding voluntary self-disclosure) and the BIS Penalty Guidelines. BIS is incorporating into the EAR relevant elements from the Policy Memoranda so that the regulations contain all relevant policies and procedures for submitting VSDs. As a result, industry will not be required to look to multiple sources to understand OEE's procedures and expectations regarding the submission of VSDs. BIS is also making clear in the BIS Penalty Guidelines that for violations of a lower value and with minimal aggravating factors, OEE's

preference is to impose non-monetary penalties to shore up a company's compliance program, which is more effective in these types of cases.

With respect to the changes to the way OEE calculates penalties, BIS is revising the BIS Penalty Guidelines so that potential penalties more appropriately reflect the seriousness of the offense by linking that determination directly to transaction value and other circumstances pertaining to a violation. These Penalty Guideline changes do so primarily for two reasons. First, BIS has identified scenarios in which the previous BIS Penalty Guidelines, which applied schedule amounts and caps well below the statutory limitations to penalties for non-egregious cases, produce a base penalty that is disproportionately low compared to the transaction value, and therefore is insufficient to serve as a deterrent or incentive for companies to invest properly in export compliance. For example, under the previous rule, the penalty for a non-egregious violation disclosed through a VSD for a transaction valued at \$100 million would be capped at \$125,000. In this rule, BIS is removing from the BIS Penalty Guidelines the caps that previously existed for non-egregious cases. BIS will continue to take mitigating factors into account, as described in the revised BIS Penalty Guidelines, and to apply an appropriate reduction to the base penalty if circumstances warrant it.

Second, the previous BIS Penalty Guidelines provided specific percentage ranges for reductions associated with certain mitigating factors (but not all mitigating factors), while it provided no such ranges for aggravating or general factors. The inclusion of specific percentage ranges for some mitigating factors and not for other factors led parties to incorrect assumptions about the range of reduction to which they were entitled. For example, the previous BIS Penalty Guidelines provided for a reduction of the base penalty amount of up to 25% for first time violations; however, a party's first offense might occur together with aggravating factors or with other mitigating factors that, when taken into account, indicate that a penalty based on a smaller or larger reduction to the base penalty is appropriate. Since it is impossible to associate potential ranges for reductions or increases with all mitigating and aggravating factors that would appropriately capture every potential combination of facts and circumstances associated with a violation, in this rule BIS is removing from the BIS Penalty Guidelines all specific ranges for

potential reduction. With these revisions, OEE is making clear that the civil monetary penalty will be adjusted (up or down) to reflect the applicable factors for administrative action set forth in the BIS Penalty Guidelines. The factors may result in a penalty amount that is lower or higher than the base penalty amount, depending upon whether they are aggravating or mitigating and how they, in the discretion of OEE, apply in totality in a particular case. As before, aggravating factors will not be used to increase the base penalty beyond the limits established in ECR A.

C. Revisions to § 764.5 (Voluntary Self-Disclosures)

1. Addition of Non-Disclosure as an Aggravating Factor

Section 764.5 did not previously include as an aggravating factor, the failure of a party to submit a voluntary disclosure. In this final rule, and consistent with the policy outlined in the 2023 Policy Memorandum, BIS revises paragraph (a) of § 764.5 to state that OEE will consider a deliberate decision by a firm (as that term is defined in § 772.1 of the EAR) not to disclose a significant apparent violation to be an aggravating factor when determining what administrative sanctions, if any, will be sought. A deliberate decision not to disclose occurs when a firm uncovers a significant apparent violation that it has committed but then chooses not to file a VSD. This new rule effectively enhances the mitigating effect of voluntary disclosure, particularly in serious cases. For example, under the previous guidelines, if a firm identified a significant apparent violation and chose not to disclose it to OEE, the company was only choosing to forgo the mitigation credit offered under the guidelines. Now, because a deliberate decision not to disclose is an aggravating factor, if a firm chooses not to disclose, it not only forgoes the mitigation credit, but also faces the possibility that BIS will further increase the penalty.

This change also reflects the importance of a firm's deliberate decision not to disclose a significant apparent violation to OEE's assessment of the strength of the company's commitment to compliance. This revision makes clear that OEE will include in its consideration of a firm's commitment to compliance whether the company made a decision not to disclose significant apparent violations. It also reflects that the deliberate non-disclosure of a significant apparent

violation may compound the harm to U.S. national security or foreign policy interests by preventing the government from taking steps to mitigate the national security consequences of the violation in a manner that a firm could not. This revision allows OEE to impose penalties—or to charge certain conduct that may have otherwise been treated with a warning letter—in such cases that are appropriate to deter future noncompliance and encourage voluntary disclosure.

2. Addition of Dual Track Process for Processing VSDs

Section 764.5 previously had only one process for handling all VSDs, regardless of whether the violation at issue in the VSD was significant, or minor. This final rule revises § 764.5 by adding a new paragraph (c) regarding disclosures involving minor or technical violations. The previous paragraph (c), now paragraph (d), is revised to focus on the portion of the dual-track system that relates to significant violations. Former paragraphs (d) through (f) are redesignated as paragraphs (e) through (g) and are also revised to reflect the dual-track system. The redesignation and changes to these paragraphs are explained below.

New paragraph (c) of § 764.5, titled “Voluntary Self-Disclosures involving minor or technical violations,” explains the process for submitting VSDs involving minor or technical violations. Paragraph (c)(1) explains that a minor or technical violation is one that does not include any aggravating factors, as defined in the BIS Penalty Guidelines, and includes several examples. Paragraph (c)(2) provides guidance on submitting an abbreviated narrative for a VSD involving minor or technical violations, including where to submit the abbreviated narrative report and what information to include, and provides that the Director of OEE may require a full narrative report pursuant to new paragraph (d)(3) if OEE suspects that aggravating factors are present. Paragraph (c)(3) authorizes parties to bundle the submission of multiple minor or technical violations into one overarching submission if the violations occurred within the preceding quarter. This change allows for disclosures of minor or technical violations to be bundled into a single VSD submission on a quarterly basis using the abbreviated narrative account process as described elsewhere in this rule. This revision will significantly reduce the workload of companies submitting minor or technical violations.

New paragraph (d), which is now titled “Voluntary Self-Disclosures

involving significant violations,” explains the process for voluntarily disclosing a significant violation. This paragraph largely retains the language of former paragraph (c) regarding how to submit the disclosure, what to include in the narrative, the types of supporting documentation to include, deadlines regarding submitting information, and the related extension request process. BIS has added the instruction that a significant violation is one that involves one or more of the aggravating factors in the BIS Penalty Guidelines, and that parties who are unsure whether their disclosure involves a minor or technical violation or a significant violation should follow the procedures for disclosing a significant violation.

Former paragraph (d), now paragraph (e) of § 764.5, has been renamed from “Action by the Office of Export Enforcement” to “Dual-track processing of Voluntary Self-Disclosures by the Office of Export Enforcement” for consistency with the dual-track approach to VSDs. In paragraph (e)(1), BIS explains that OEE will generally resolve VSDs involving minor or technical violations within 60 days, either by informing the submitter that it intends to take no action or by issuing a warning letter. In paragraph (e)(2), BIS explains that for VSDs that indicate significant violations, BIS will conduct an investigation and, as quickly as the facts and circumstances permit, take one of five possible actions. The five potential actions correspond to the possible actions BIS could take under the former paragraph (d).

BIS has made conforming changes throughout these paragraphs to reflect the updated paragraph numbering, as well as minor revisions for clarity. These include consistently using the term “full narrative” instead of “narrative account” to describe the detailed submission that follows an initial notification when using the process in paragraph (d)(2), adding packing lists to the examples of supporting documentation that may be appropriate to include with a full narrative, and adding contact information for email submissions.

3. Revisions to Paragraph Regarding Treatment of Unlawfully Exported Items

Former paragraph (f) is now moved to paragraph (g) to accommodate the addition of new paragraph (c). Consistent with announcements in the 2024 Policy Memorandum, this paragraph has been revised to add a clause explaining that any person (not just the party submitting a VSD) may notify the Director of OEE that a violation has occurred and then request

permission from the Office of Exporter Services to engage in activities described in § 764.2(e) that would otherwise be prohibited. Previously, this paragraph limited such requests for permission to parties who submitted a VSD. This change allows parties in possession of or with an interest in an item involved in a VSD that would otherwise be subject to the prohibitions in § 764.2(e) to submit a request to OEE even if they did not submit a VSD.

BIS also added paragraph (g)(1)(iii), which explains that in order to return to the United States an item that has been unlawfully exported and disclosed under § 764.5, a person is only required to notify the Director of OEE. BIS adds this language to clarify that OEE authorizes the return of any unlawfully exported item to the United States and to reduce the burden on industry and BIS by removing the need for companies to submit and OEE to review such requests for authorization.

This section also adds a new paragraph detailing how to submit requests for authorization and that explains what information is required to process requests, which includes: the nature of the violation including when and how the violations occurred; description, quantity, value in U.S. dollars and Export Control Classification Number (ECCN) or other classification of the items involved; license reference numbers, if applicable; identities and addresses of all individuals and organizations subject to the request; the scope of the request specifying the § 764.2(e) activities, including end-use; and point of contact.

Paragraph (g)(4) regarding authorization for reexports of items subject to a VSD is revised to clarify that such authorization is required for transfers as well. Paragraph (4) is revised to include reference to the notifications provided for in the revisions to the note to paragraph (g)(1)(ii) discussed above. BIS also adds language to this paragraph instructing applicants to include with any request for authorization under this paragraph a copy of the relevant VSD or notification. A new note to paragraph (g)(4) clarifies that a party may submit a request under this section to obtain permission to use a license exception or No License Required (NLR) designation so long as the reexport or transfer at issue otherwise meets the terms and conditions of the relevant license exception or the NLR designation. Finally, this additional paragraph (g) clarifies that Automated Export System (AES) filing errors, where there is no other violation of the EAR, only require notification to OEE under paragraphs

(g)(1)(i) and (ii) and do not require additional authorization under this paragraph (g). Paragraph (g) also clarifies that in such cases, a party must correct the AES filing with the Census Bureau before proceeding with activities subject to the EAR, provided the activities meet any EAR requirements. Removing authorization requests related to AES filing errors will save exporter and government resources. If a report includes any other violation, such as failure to obtain a required license, authorization under section 764 is required.

D. Revisions to the BIS Penalty Guidelines (Supplement No. 1 to Part 766)

This rule makes several changes to the BIS Penalty Guidelines in supplement no. 1 to part 766 of the EAR, described in greater detail below. These include updates to the statutory references, changes to the penalty calculations and to certain mitigating or aggravating factors, the addition of non-monetary settlements as an action that BIS may take, and the removal of language relating to the application of penalty amounts toward compliance program enhancements.

1. Updates to Statutory References

This rule revises the BIS Penalty Guidelines to replace references to outdated statutes. References to the Export Administration Act of 1979 (EAA) are replaced by references to ECRA; additionally, references to the “Federal Civil Penalties Inflation Adjustment Act of 1990” (FPIAA 1990) are replaced by the “Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” (FCPIAIA 2015). These changes are made to reflect BIS’s current statutory authorities.

2. Removal of Applicable Schedule Amounts From the BIS Penalty Guidelines

Under section I “Definitions,” BIS is removing the definition of “applicable schedule amount” completely. BIS is also removing the corresponding references in the base penalty matrix and in the explanation of the base penalty calculation in non-egregious cases in section IV.B. This change will make administrative penalties more straightforward and in line with the overall value of the transaction at issue. Previously, these schedule amounts limited the amount of the penalty in situations where they applied. For example, penalties for a transaction valued at \$170,000 or more were capped at \$250,000. OEE is removing this limitation so that it can impose

penalties with sufficient deterrent effect in situations where transaction values are high.

3. Changes to Section II To Clarify and Expand the Range of Possible OEE Responses to Apparent Violations of the EAR

a. Addition of Paragraph (II)(C) for the Provision of Non-Monetary Penalties

In the 2022 Policy Memorandum, BIS introduced non-monetary resolutions as a new type of penalty response to resolve enforcement cases that involve non-egregious conduct and that have not resulted in serious national security harm, but remain serious enough to warrant more than a warning letter or no-action letter. Such resolutions require remediation through the imposition of a suspended denial order with certain conditions, such as training and compliance requirements, as appropriate, to mitigate harm from past violations and prevent future ones. Non-monetary resolutions give OEE the flexibility to impose sanctions that require a company to improve its compliance program even when a monetary penalty would not be appropriate or the value of such a penalty would be too low to have a deterrent effect. In this rule, BIS formalizes non-monetary resolutions as an enforcement response by listing it under paragraph (II)(D) of the BIS Penalty Guidelines. The subsequent subparagraphs under section II to supplement no. 1 are renumbered paragraph (II)(E) through new paragraph (II)(H).

b. Removal of Application of Penalty Toward Compliance Enhancements in OEE Consideration of Suspended or Deferred Penalties.

Paragraphs (II)(G) and (II)(H), formerly paragraphs (II)(F) and (II)(G), are revised to remove reference to the practice of allowing a Respondent to apply a portion of a suspended or deferred penalty toward compliance program enhancements. This change reflects BIS’s view that companies should independently make appropriate investments in their compliance program sufficient to identify and prevent potential violations, and generally should not expect to receive credit for the cost of making such investments against administrative penalties for past misconduct.

4. Changes to Section III, “Factors Affecting Administrative Sanctions”

BIS also makes several changes to section III regarding aggravating, general, and mitigating factors affecting

administrative sanctions. These changes include revising the foreign policy considerations in paragraph (III)(C)(2) and adding a paragraph (N) under section III. Paragraphs (III)(D) through the new paragraph (III)(N) and their headings and content are changed accordingly and redesignated to accommodate this additional paragraph (N). The revisions, redesignation, and changes to these paragraphs are explained below.

a. Amending Factor C To Include OEE's Consideration of Conduct Enabling Human Rights Abuses

ECRA authorizes BIS to implement export controls “to carry out the foreign policy of the United States, including the protection of human rights and the promotion of democracy,” 50 U.S.C. 4811(2)(D). Consistent with this authority, and in line with U.S. foreign policy objectives, BIS is amending Aggravating Factor C, Harm to Regulatory Program Objectives, at Paragraph (III)(C)(2) to include the enabling of human rights abuses as a specific consideration when BIS assesses the potential impact of an apparent violation on U.S. foreign policy objectives.

b. Addition of New Aggravating Factor for Deliberate Failure To Disclose a Significant Apparent Violation

This rule adds a new aggravating factor at paragraph (III)(D), titled “Failure to disclose a significant apparent violation.” This new paragraph (III)(D) is added to clarify that OEE will consider a deliberate decision by a firm (as that term is defined in § 772.1 of the EAR) not to disclose a significant apparent violation to be an aggravating factor when determining what administrative sanctions, if any, will be sought. This is consistent with the corresponding change to § 764.5 discussed above. As discussed above, this revision is intended to encourage disclosure by industry when significant apparent violations are uncovered. The text previously found in paragraph (III)(D) is relocated to paragraph (III)(E), and all of the subsequent factors in section III are renumbered through new factor N at paragraph (III)(N).

BIS has made two additional changes for consistency with the addition of this aggravating factor. First, BIS has also deleted the note under “Concealment” in Aggravating Factor A, which previously stated that failure to file a VSD does not constitute concealment. Second, BIS has added a sentence under “Compliance Program” in new paragraph (F), previously paragraph (E), stating that OEE will consider whether

a firm has made a deliberate decision not to voluntarily disclose a significant apparent violation uncovered by its compliance program as part of its consideration of the compliance program under General Factors.

c. Clarifying “Regulatory History” and “Criminal Convictions” Subfactors Under General Factors

BIS has changed two subfactors to Factor E (previously D), titled “Individual Characteristics,” to clarify how it considers the respondent’s prior history. First, in subfactor 4, which relates to the respondent’s regulatory history, BIS has removed language that previously excluded a respondent’s history relating to antiboycott matters from consideration, as well as language that limited BIS’s review of prior history to five years preceding the date of the transaction giving rise to the apparent violation. This change was made to focus OEE penalty decisions on the most relevant prior conduct. BIS has also made clarifying revisions, including bringing the information that OEE will consider previous penalties, warning letters, or administrative actions (including settlements)—which was already reflected in the header for this subfactor—into the explanatory text.

Second, subfactor 6 at paragraph (III)(E)(6), “Criminal Convictions,” is revised to clarify that, in addition to considering whether a respondent has been convicted or entered a guilty plea as part of a resolution with the Department of Justice, OEE also may consider whether a respondent has entered into any other type of resolution with the Department of Justice or other prosecutorial authorities related to a criminal violation. This change clarifies that OEE will consider resolutions other than a criminal conviction, such as Deferred Prosecution Agreements or Non-Prosecution Agreements, as part of the respondent’s criminal history.

d. Clarifying What Constitutes Exceptional Cooperation Under Mitigating Factors

The mitigating factor “Exceptional Cooperation with OEE,” previously Factor G, is now renumbered under Factor H at paragraph (III)(H), and continues to list illustrative examples of how OEE evaluates exceptional cooperation. Paragraph (III)(H)(4) under this factor is revised to list an additional consideration regarding whether the Respondent has previously disclosed information regarding the conduct of others that led to an enforcement action by OEE. This change is made to provide

an incentive for companies to disclose the wrongful conduct of others.

5. Changes to Section IV, “Civil Penalties”

a. Revisions to Paragraph (IV)(B)(1) To Identify Decision Maker for Egregiousness Determination

The previous paragraph (IV)(B)(1) said simply that “OEE” will determine whether a case is considered “egregious” under the BIS Penalty Guidelines. BIS has revised this paragraph to specify that the OEE Director will make determinations as to whether a case is deemed egregious for purposes of the base penalty calculation. This determination no longer requires the Assistant Secretary of Commerce for Export Enforcement to give concurrence. The Assistant Secretary is already the signature authority on final orders implementing settlement agreements, so the Assistant Secretary’s additional concurrence is unnecessary.

b. Revisions to Paragraph (IV)(B)(2)

The “Base Penalty Matrix” under paragraph (IV)(B)(2)(a) and paragraph (IV)(B)(2)(b) are edited as follows: paragraph (IV)(B)(2)(a)(i) provides that in non-egregious VSD cases, the base penalty amount is no longer capped at a maximum of \$125,000, but is instead capped at one-half of the transaction value. Paragraph (IV)(B)(2)(a)(ii) provides that, in a non-egregious case not initiated by a VSD, the base penalty amount is no longer based on the applicable schedule amount or capped at \$250,000, but is instead capped at the full transaction value. BIS is removing from the base penalty matrix and related text the previously established schedule amounts and penalty caps for non-egregious cases to allow penalties to be calculated based on transactional value instead of progressive brackets that round up. For example, a transaction valued at \$100,000 would have a schedule amount of \$170,000 under existing guidelines. The penalty cap is removed to recognize that certain transactions are of such high value, that any potential penalty under the cap would not serve as an effective deterrent.

Additionally, in paragraph (IV)(B)(2)(b) “Adjustment for Applicable Relevant Factors,” this rule removes references to percentages and reductions that may correspond to certain factors affecting administrative sanctions in a specific case and replaces them with an explanation that the application of the factors, as they apply in combination to a particular case, may result in a penalty

amount that is higher or lower than the base penalty amount. As discussed in the background section above, this change is necessary because the previous guidelines, which assigned percentages to certain factors but not to other factors, reduced OEE's flexibility to impose appropriate penalties that serve as a deterrent and created a misperception that those percentages could not be offset by aggravating factors.

c. Addition of Paragraph (IV)(B)(2)(a)(v) To Clarify Annual Adjustments to Statutory Maximum Penalty

BIS is adding paragraph (IV)(B)(2)(a)(v). This new paragraph describes the applicable statutory maximum civil penalty per violation as established by ECRA, and which is adjusted annually under FCPIA AIA 2015.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act (ECRA), 50 U.S.C. 4801–4852. ECRA, as amended, provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 12866, 13563, and 14094 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 and distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility.

Pursuant to E.O. 12866, this final rule has been determined to not be a significant regulatory action. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. BIS believes that the regulation will reduce the

overall burden hours and costs associated with the following information collections. However, the minimal reduction of burden hours falls within the existing estimates currently associated with these control numbers.

- 0694–0088, “Simplified Network Application Processing System,” which carries a burden-hour estimate of 29.7 minutes for a manual or electronic submission;
- 0694–0137 “License Exceptions and Exclusions,” which carries a burden-hour estimate of 1.5 hours per submission (*Note*: submissions for License Exceptions are rarely required);
- 0694–0096 “Five Year Records Retention Period,” which carries a burden-hour estimate of less than 1 minute; and
- 0607–0152 “Automated Export System (AES) Program,” which carries a burden-hour estimate of 3 minutes per electronic submission.

Additional information regarding these collections of information—including all background materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> and using the search function to enter either the title of the collection or the OMB Control Number.

3. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Parts 764 and 766

Administrative practice and procedure, Confidential business information, Exports, Law enforcement, Penalties.

Accordingly, parts 764 and 766 of the Export Administration Regulations (15 CFR parts 730 to 774) are amended as follows:

PART 764—ENFORCEMENT AND PROTECTIVE MEASURES

- 1. The authority citation for part 764 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4611–4613; 50 U.S.C. 1701 *et seq.*; E.O.

13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

- 2. Section 764.5 is amended by revising paragraphs (a) and (b) through (f) and adding paragraph (g) to read as follows:

§ 764.5 Voluntary self-disclosure.

(a) *General policy.* BIS strongly encourages disclosure to the Office of Export Enforcement (OEE) if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. As described in supplement no. 1 to part 766, voluntary self-disclosure is a mitigating factor, and a firm's deliberate decision not to disclose significant apparent violations is an aggravating factor in determining what administrative sanctions, if any, will be sought by OEE. A deliberate decision not to disclose occurs when a firm uncovers a significant apparent violation that it has committed but then chooses not to file a VSD.

* * * * *

(c) *Voluntary self-disclosures involving minor or technical violations—*(1) *General.* Any person wanting to voluntarily disclose a minor or technical violation should submit an abbreviated narrative report, as described in paragraph (c)(2) of this section. A minor or technical violation is one that does not contain any aggravating factors present as defined in section III(A) of supplement no. 1 to part 766. Examples of minor or technical violations include, but are not limited to, immaterial Electronic Export Information (EEI) filing errors, inadvertent record keeping violations resulting from failed file retrieval or retention mechanisms (*e.g.*, physical damage caused by flood or fire and/or electronic corruption due to malware, virus, or outage), incorrect use of one license exception where other license exceptions were available, etc.

(2) *Abbreviated narrative report.* The abbreviated narrative report should be submitted by email to bis_vsd_intake@bis.doc.gov or in writing to the address in paragraph (d)(7) of this section. The email subject line should include the word “abbreviated” if it is an abbreviated VSD.

(i) The notification should include:

(A) The name of the person making the disclosure and should designate a contact person regarding the abbreviated narrative report and provide that contact person's current business street address, email address, and telephone number; and

(B) A description of the general nature and extent of the violations (including, but not limited to, the destination and

parties involved in any transaction, and the number, classification, and value of any items involved). Parties may itemize the various minor or technical violations in list or spreadsheet form.

(ii) The Director of OEE at their discretion may request a full narrative report pursuant to paragraph (d)(3) of this section if OEE suspects the presence of aggravating factors which will be due in 180 days from the date of the OEE Director's request.

(3) *Bundling of minor/technical violations.* Parties may bundle multiple minor or technical violations into one overarching submission, if the violations occurred within the preceding quarter. Parties may submit such minor or technical violations into a single VSD submission on a quarterly basis using the abbreviated narrative account process identified in paragraph (c)(2) of this section.

(d) *Voluntary self-disclosures involving significant violations—(1) General.* Any person wanting to voluntarily disclose a significant violation should, in the manner outlined in paragraph (c)(2) of this section, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected. A significant violation is one that involves one or more aggravating factors as defined in section III(A) of supplement no. 1 to part 766. Those unsure of whether their possible disclosure relates to a minor or technical violation, or a significant violation, should follow the procedure in paragraph (d)(2) of this section for a significant violation.

(2) *Initial notification—(i) Manner and content of initial notification.* The initial notification should be submitted by email to bis_vsd_intake@bis.doc.gov or in writing to the address in paragraph (d)(7) of this section. The notification should include the name of the person making the disclosure and a brief description of the suspected violations and should designate a contact person regarding the initial notification and provide that contact person's current business street address, email address, and telephone number. The notification should describe the general nature and extent of the violations. OEE recognizes that there may be situations where it will not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should

be contacted promptly at the office listed in paragraph (d)(7) of this section.

(ii) *Initial notification date.* For purposes of calculating when a complete narrative account must be submitted under paragraph (d)(2)(iii) of this section, the initial notification date is the date the notification is received by OEE. OEE will notify the disclosing party in writing of the date that it receives the initial notification. At OEE's discretion, such writing from OEE may be on paper, or in an email message or facsimile transmission from OEE, or by any other method for the transmission of written communications. Where it is not practical to make an initial notification in writing, the person making the notification should confirm the oral notification in writing as soon as possible.

(iii) *Timely completion of narrative accounts.* The full narrative account required by paragraph (d)(3) of this section must be received by OEE within 180 days of the initial notification date for purposes of paragraph (b)(3) of this section, absent an extension from the Director of OEE. If the person making the initial notification subsequently completes and submits to OEE the narrative account required by paragraph (d)(3) of this section such that OEE receives it within 180 days of the initial notification date, or within the additional time, if any, granted by the Director of OEE pursuant to paragraph (d)(2)(iv) of this section, the disclosure, including violations disclosed in the narrative account that were not expressly mentioned in the initial notification, will be deemed to have been made on the initial notification date for purposes of paragraph (b)(3) of this section if the initial notification was made in compliance with paragraphs (d)(1) and (2) of this section. Failure to meet the deadline (either the initial 180-day deadline or an extended deadline granted by the Director of OEE) would not be an additional violation of the EAR, but such failure may reduce or eliminate the mitigating impact of the voluntary disclosure under supplement no. 1 to this part. For purposes of determining whether the deadline has been met under this paragraph, a complete narrative account must contain all of the pertinent information called for in paragraphs (d)(3) through (5) of this section, and the voluntary self-disclosure must otherwise meet the requirements of this section.

(iv) *Deadline extensions.* The Director of OEE may extend the 180-day deadline upon a determination in his or her discretion that U.S. Government interests would be served by an

extension or that the person making the initial notification has shown that more than 180 days is reasonably needed to complete the narrative account.

(A) *Conditions for extension.* The Director of OEE in his or her discretion may place conditions on the approval of an extension. For example, the Director of OEE may require that the disclosing person agree to toll the statute of limitations with respect to violations disclosed in the initial notification or discovered during the review for or preparation of the narrative account, and/or require the disclosing person to undertake specified interim remedial compliance measures.

(B) *Contents of request.* (1) In most instances 180 days should be adequate to complete the narrative account. Requests to extend the 180-day deadline set forth in paragraph (d)(2)(iii) of this section will be determined by the Director of OEE pursuant to his or her authority under this paragraph (d)(2)(iv) based upon his consideration and evaluation of U.S. Government interests and the facts and circumstances surrounding the request and any related investigations. Such requests should show specifically that the person making the request:

(i) Began its review promptly after discovery of the violations;

(ii) Has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy;

(iii) Reasonably needs the requested extension despite having begun its review promptly after discovery of the violations and having conducted its review and preparation of the narrative account as expeditiously as can be expected consistent with the need for completeness and accuracy; and

(iv) Has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations.

(2) Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances and should also designate a contact person regarding the request and provide that contact person's current business street address, email address, and telephone number. Requests may also include additional information that the person making the request reasonably believes is pertinent to the request under the applicable facts and circumstances.

(C) *Timing of requests.* Requests for an extension should be made before the 180-day deadline and as soon as

possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with paragraph (d)(2)(iv)(B) of this section. Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties who request an extension shortly before the deadline incur the risk that the Director of OEE will be unable to consider the request, determine whether or not to grant the extension, and communicate his or her decision before the deadline, and that any subsequently submitted narrative account will be considered untimely under paragraph (d)(2)(iii) of this section.

(3) *Full narrative.* After the initial notification, a thorough review should be conducted of export-related transactions where violations with potentially aggravating factors are suspected (as defined in section III(A) of supplement no. 1 to part 766). OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

- (i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;
- (ii) An explanation of when and how the violations occurred;
- (iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;
- (iv) License numbers;
- (v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills, bills of lading and packing lists; and

(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR (15 CFR part 762).

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. § 764.2(g), relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) *Oral presentations.* OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted by email to bis_vsd_intake@bis.doc.gov or mailed to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482-5036.

(e) *Dual-track processing of Voluntary Self-Disclosures by the Office of Export Enforcement.* (1) For VSDs that involve minor or technical infractions, including abbreviated VSDs, OEE will generally resolve the VSD within 60 days of a final VSD submission with one

of the actions in paragraphs (e)(1)(i) and (ii) of this section.

(i) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action; or

(ii) Issue a warning letter.

(2) For VSDs that indicate significant violations, OEE will conduct an investigation, and as quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(i) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(ii) Issue a warning letter;

(iii) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(iv) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(v) Refer the matter to the Department of Justice for criminal prosecution.

(f) *Criteria.* Supplement no. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

(g) *Treatment of unlawfully exported items.* (1) Any person taking certain actions with knowledge that a violation of ECRA or the EAR has occurred has violated § 764.2(e).

(i) Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in § 764.2(e) that would otherwise be prohibited.

(ii) Any person may also notify the Director of OEE that a violation has occurred and request permission from BIS to engage in the activities described in § 764.2(e) that would otherwise be prohibited.

(iii) Actions to return to the United States an item that has been unlawfully exported and disclosed under this section only require notification to the Director of OEE. Items subject to a violation that have been returned to the United States do not require further authorization under this paragraph (g) for future activities, provided that those future activities comply with any applicable EAR requirements.

(2) How to submit a request under paragraphs (g)(1)(i) through (iii) of this section: A request should be submitted on letterhead, signed, and sent to the Director of the Office of Exporter

Services at emcd@bis.doc.gov with a copy sent to bis_vsd_intake@bis.doc.gov. The request should be specific and detail the following information: nature of the violation including when and how the violations occurred; description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; license numbers, if applicable; identities and addresses of all individuals and organizations subject to the request, the scope of the request specifying the § 764.2(e) activities, including end-use, and point of contact. A copy of the initial or final VSD or notification made to the Director of OEE should be attached to the request.

(3) If a request submitted pursuant to paragraph (g)(1)(i) or (ii) of this section is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate § 764.2(e) will not constitute violations.

Note 1 to paragraph (g)(3): Even if permission is granted, the person making a voluntary self-disclosure pursuant to paragraph (g)(1)(i) of this section is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(4) *Reexports and transfers (in-country).* To reexport or transfer (in-country) items that are the subject of a voluntary self-disclosure or notification, and that have been exported contrary to the provisions of ECRA or the EAR, authorization may be requested from BIS in accordance with the provisions of part 748 of the EAR (15 CFR part 748). If the applicant who submitted the reexport or transfer authorization knows that the items are the subject of a voluntary self-disclosure or notification, the request should state that a voluntary self-disclosure or notification was made in connection with the export of the items for which authorization is sought and a copy of the voluntary self-disclosure or notification should be included with the license application.

Note 2 to paragraph (g)(4): If the items are otherwise eligible for reexport or transfer under a license exception or the No License Required (NLR) designation, a request under this paragraph (g) may be submitted to obtain permission for the use of the license exception or NLR designation for such reexport or transfer, provided the transaction otherwise meets the terms and conditions of the license exception or NLR designation.

(5) *Automated Export System (AES) filing errors.* Disclosures and notifications of AES filing errors reported to OEE under paragraphs (g)(1)(i) and (ii) of this section, where no other violation of the EAR only require notification to OEE and do not require

authorization under this paragraph (g) to engage in activities subject to the EAR. The AES filing must be corrected with the Census Bureau before proceeding with such activities provided the activities meet any applicable EAR requirements. If another violation, such as failure to obtain a required license, has occurred in addition to the AES filing error, authorization under this paragraph (g) is required.

PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

■ 3. The authority citation for part 766 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Supplement no. 1 to part 766 is revised to read as follows:

Supplement No. 1 to Part 766—Guidance on Charging and Penalty Determinations in Settlement of Administrative Enforcement Cases

Introduction

This supplement describes how the Office of Export Enforcement (OEE) at the Bureau of Industry and Security (BIS) responds to apparent violations of the Export Administration Regulations (EAR) and, specifically, how OEE makes penalty determinations in the settlement of civil administrative enforcement cases under part 764 of the EAR. This guidance does not apply to enforcement cases for violations under part 760 of the EAR—Restrictive Trade Practices or Boycotts. Supplement no. 2 to part 766 continues to apply to civil administrative enforcement cases involving part 760 violations.

Because many administrative enforcement cases are resolved through settlement, the process of settling such cases is integral to the enforcement program. OEE carefully considers each settlement offer in light of the facts and circumstances of the case, relevant precedent, and OEE's objective to achieve in each case an appropriate penalty and deterrent effect. In settlement negotiations, OEE encourages parties to provide, and will give serious consideration to, information and evidence that parties believe are relevant to the application of this guidance to their cases, to whether a violation has in fact occurred, or to whether they have an affirmative defense to potential charges.

This guidance does not confer any right or impose any obligation regarding what penalties OEE may seek in litigating a case or what posture OEE may take toward settling a case. Parties do not have a right to a settlement offer or particular settlement terms from OEE, regardless of settlement positions OEE has taken in other cases.

I. Definitions

Note: See also: Definitions contained in § 766.2 of the EAR.

Apparent Violation means conduct that constitutes an actual or possible violation of the Export Control Reform Act of 2018, the EAR, other statutes administered or enforced by BIS, as well as executive orders, regulations, orders, directives, or licenses issued pursuant thereto.

Transaction value means the U.S. dollar value of a subject transaction, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, AES filings or similar documents. Where the transaction value is not otherwise ascertainable, OEE may consider the market value of the items that were the subject of the transaction and/or the economic benefit derived by the Respondent from the transaction, in determining transaction value. In situations involving a lease of U.S.-origin items, the transaction value will generally be the value of the lease. For purposes of these guidelines, “transaction value” will not necessarily have the same meaning, nor be applied in the same manner, as that term is used for import valuation purposes at 19 CFR 152.103.

Voluntary self-disclosure means the self-initiated notification to OEE of an apparent violation as described in and satisfying the requirements of § 764.5 of the EAR.

II. Types of Responses to Apparent Violations

OEE, among other responsibilities, investigates apparent violations of the EAR, or any order, license or authorization issued thereunder. When it appears that such a violation may have occurred, OEE investigations may lead to no action, a warning letter or an administrative enforcement proceeding. A violation may also be referred to the Department of Justice for criminal prosecution. The type of enforcement action initiated by OEE will depend primarily on the nature of the violation. Depending on the facts and circumstances of a particular case, an OEE investigation may lead to one or more of the following actions:

A. No Action. If OEE determines that there is insufficient evidence to conclude that a violation has occurred, determines that a violation did not occur and/or, based on an analysis of the Factors outlined in section III of these guidelines, concludes that the conduct does not rise to a level warranting an administrative response, then no action will be taken. In such circumstances, if the investigation was initiated by a voluntary self-disclosure (VSD), OEE will issue a letter (a no-action letter) indicating that the investigation is being closed with no administrative action being taken. OEE may issue a no-action letter in non-voluntarily disclosed cases at its discretion. A no-action determination by OEE represents OEE's disposition of the apparent violation, unless OEE later learns of additional information regarding the same or similar transactions or other relevant facts. A no-action letter is not a final agency action with respect to whether a violation occurred.

B. Warning Letter. If OEE determines that a violation may have occurred but a civil penalty is not warranted under the circumstances, and believes that the

underlying conduct could lead to a violation in other circumstances and/or that a Respondent does not appear to be exercising due diligence in assuring compliance with the statutes, executive orders, and regulations that OEE enforces, OEE may issue a warning letter. A warning letter may convey OEE's concerns about the underlying conduct and/or the Respondent's compliance policies, practices, and/or procedures. It may also address an apparent violation of a minor or technical nature, where good faith efforts to comply with the law and cooperate with the investigation are present, or where the investigation commenced as a result of a voluntary self-disclosure satisfying the requirements of § 764.5 of the EAR, provided that no aggravating factors exist. In the exercise of its discretion, OEE may determine in certain instances that issuing a warning letter, instead of bringing an administrative enforcement proceeding, will achieve the appropriate enforcement result. A warning letter will describe the apparent violation and urge compliance. A warning letter represents OEE's enforcement response to and disposition of the apparent violation, unless OEE later learns of additional information concerning the same or similar apparent violations. A warning letter does not constitute a final agency action with respect to whether a violation has occurred.

C. Administrative enforcement case. If OEE determines that a violation has occurred and, based on an analysis of the Factors outlined in section III of these guidelines, concludes that the Respondent's conduct warrants a civil monetary penalty or other administrative sanctions, OEE may initiate an administrative enforcement case. The issuance of a charging letter under § 766.3 of the EAR initiates an administrative enforcement proceeding. Charging letters may be issued when there is reason to believe that a violation has occurred. Cases may be settled before or after the issuance of a charging letter. See § 766.18 of the EAR. OEE may prepare a proposed charging letter which could result in a case being settled before issuance of an actual charging letter. See § 766.18(a) of the EAR. If a case does not settle before issuance of a charging letter and the case proceeds to adjudication, the resulting charging letter may include more violations than alleged in the proposed charging letter, and the civil monetary penalty amounts assessed may be greater than those provided for in section IV of these guidelines. Civil monetary penalty amounts for cases settled before the issuance of a charging letter will be determined as discussed in section IV of these guidelines. A civil monetary penalty may be assessed for each violation. The maximum amount of such a penalty per violation is stated in § 764.3(a)(1), subject to adjustments under Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701), which are codified at 15 CFR 6.4. OEE will afford the Respondent an opportunity to respond to a proposed charging letter. Responses to charging letters following the institution of an enforcement proceeding under part 766 of the EAR are governed by § 766.3 of the EAR.

D. Non-Monetary Penalty. OEE may seek a non-monetary penalty if OEE determines the

violations are not egregious and have not resulted in serious national security harm, but rise above the level of cases warranting a warning letter or no-action letter. Instead of requiring monetary penalties, such agreements will require remediation through the imposition of a suspended denial order with certain conditions, such as training and compliance requirements, as appropriate, to mitigate harm from past violations and prevent future ones.

E. Civil Monetary Penalty. OEE may seek a civil monetary penalty if OEE determines that a violation has occurred and, based on the Factors outlined in section III of these guidelines, concludes that the Respondent's conduct warrants a monetary penalty. Section IV of these guidelines will guide the agency's exercise of its discretion in determining civil monetary penalty amounts.

F. Criminal Referral. In appropriate circumstances, OEE may refer the matter to the Department of Justice for criminal prosecution. Apparent violations referred for criminal prosecution also may be subject to a civil monetary penalty and/or other administrative sanctions or action by BIS.

G. Other Administrative Sanctions or Actions. In addition to or in lieu of other administrative actions, OEE may seek sanctions listed in § 764.3 of the EAR. BIS may also take the following administrative actions, among other actions, in response to an apparent violation:

License Revision, Suspension or Revocation. BIS authorizations to engage in a transaction pursuant to a license or license exception may be revised, suspended or revoked in response to an apparent violation as provided in §§ 740.2(b) and 750.8 of the EAR.

Denial of Export Privileges. An order denying a Respondent's export privileges may be issued, as described in § 764.3(a)(2) of the EAR. Such a denial may extend to all export privileges, as set out in the standard terms for denial orders in supplement no. 1 to part 764 of the EAR, or may be narrower in scope (e.g., limited to exports of specified items or to specified destinations or customers). A denial order may also be suspended in whole or in part in accordance with § 766.18(c).

Exclusion from practice. Under § 764.3(a)(3) of the EAR, any person acting as an attorney, accountant, consultant, freight forwarder or other person who acts in a representative capacity in any matter before BIS may be excluded from practicing before BIS.

Training and Audit Requirements. In appropriate cases, OEE may require as part of a settlement agreement that the Respondent provide training to employees as part of its compliance program, adopt other compliance measures, and/or be subject to internal or independent audits by a qualified outside person.

H. Suspension or Deferral. In appropriate cases, payment of a civil monetary penalty may be suspended or deferred during a probationary period under a settlement agreement and order. If the terms of the settlement agreement or order are not adhered to by the Respondent, then suspension or deferral may be revoked and

the full amount of the penalty imposed. See § 764.3(a)(1)(iii) of the EAR. In determining whether suspension or deferral is appropriate, OEE may consider, for example, whether the Respondent has demonstrated a limited ability to pay a penalty that would be appropriate for such violations, so that suspended or deferred payment can be expected to have sufficient deterrent value, and whether, in light of all of the circumstances, such suspension or deferral is necessary to make the financial impact of the penalty consistent with the impact of penalties on other parties who committed similar violations.

III. Factors Affecting Administrative Sanctions

Many apparent violations are isolated occurrences, the result of a good-faith misinterpretation, or involve no more than simple negligence or carelessness. In such instances, absent the presence of aggravating factors, the matter frequently may be addressed with a no action determination letter or, if deemed necessary, a warning letter. In other cases, where the imposition of an administrative penalty is deemed appropriate, OEE will consider some or all of the following Factors in determining the appropriate sanctions in administrative cases, including the appropriate amount of a civil monetary penalty where such a penalty is sought and is imposed as part of a settlement agreement and order. These factors describe circumstances that, in OEE's experience, are commonly relevant to penalty determinations in settled cases. Factors that are considered exclusively aggravating, such as willfulness, or exclusively mitigating, such as situations where remedial measures were taken, are set forth paragraphs II(A) through (D) and (G) through (I). This guidance also identifies General Factors—which can be either mitigating or aggravating—such as the presence or absence of an internal compliance program at the time the apparent violations occurred. Other relevant Factors may also be considered at OEE's discretion.

While some violations of the EAR have a degree of knowledge or intent as an element of the offense, OEE may regard a violation of any provision of the EAR as knowing or willful if the facts and circumstances of the case support that conclusion. For example, evidence that a corporate entity had knowledge at a senior management level may mean that a higher penalty may be appropriate. OEE will also consider, in accordance with supplement no. 3 to part 732 of the EAR (15 CFR part 732), the presence of any red flags that should have alerted the Respondent that a violation was likely to occur. The aggravating factors identified in the Guidelines do not alter or amend § 764.2(e) or the definition of “knowledge” in § 772.1, or other provisions of parts 764 and 772 of the EAR (15 CFR parts 764 and 772). If the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty, a denial or exclusion order may also be imposed to prevent future violations of the EAR.

Aggravating Factors

A. Willful or Reckless Violation of Law.

OEE will consider a Respondent's apparent willfulness or recklessness in violating, attempting to violate, conspiring to violate, or causing a violation of the law. Generally, to the extent the conduct at issue appears to be the result of willful conduct—a deliberate intent to violate, attempt to violate, conspire to violate, or cause a violation of the law—the OEE enforcement response will be stronger. Among the factors OEE may consider in evaluating apparent willfulness or recklessness are:

1. *Willfulness.* Was the conduct at issue the result of a decision to take action with the knowledge that such action would constitute a violation of U.S. law? Did the Respondent know that the underlying conduct constituted, or likely constituted, a violation of U.S. law at the time of the conduct?

2. *Recklessness/gross negligence.* Did the Respondent demonstrate reckless disregard or gross negligence with respect to compliance with U.S. regulatory requirements or otherwise fail to exercise a minimal degree of caution or care in avoiding conduct that led to the apparent violation? Were there warning signs that should have alerted the Respondent that an action or failure to act would lead to an apparent violation?

3. *Concealment.* Was there a deliberate effort by the Respondent to hide or purposely obfuscate its conduct in order to mislead OEE, Federal, State, or foreign regulators, or other parties involved in the conduct, about an apparent violation?

4. *Pattern of Conduct.* Did the apparent violation constitute or result from a pattern or practice of conduct or was it relatively isolated and atypical in nature? In determining both whether to bring charges and, once charges are brought, whether to treat the case as egregious, OEE will be mindful of certain situations where multiple recurring violations resulted from a single inadvertent error, such as misclassification. However, for cases that settle before filing of a charging letter with an Administrative Law Judge, OEE will generally charge only the most serious violation per transaction. If OEE issues a proposed charging letter and subsequently files a charging letter with an Administrative Law Judge because a mutually agreeable settlement cannot be reached, OEE will continue to reserve its authority to proceed with all available charges in the charging letter based on the facts presented. When determining a penalty, each violation is potentially chargeable.

5. *Prior Notice.* Was the Respondent on notice, or should it reasonably have been on notice, that the conduct at issue, or similar conduct, constituted a violation of U.S. law?

6. *Management Involvement.* In cases of entities, at what level within the organization did the willful or reckless conduct occur? Were supervisory or managerial level staff aware, or should they reasonably have been aware, of the willful or reckless conduct?

B. *Awareness of Conduct at Issue: The Respondent's awareness of the conduct giving rise to the apparent violation.* Generally, the greater a Respondent's actual knowledge of, or reason to know about, the

conduct constituting an apparent violation, the stronger the OEE enforcement response will be. In the case of a corporation, awareness will focus on supervisory or managerial level staff in the business unit at issue, as well as other senior officers and managers. Among the factors OEE may consider in evaluating the Respondent's awareness of the conduct at issue are:

1. *Actual Knowledge.* Did the Respondent have actual knowledge that the conduct giving rise to an apparent violation took place, and remain willfully blind to such conduct, and fail to take remedial measures to address it? Was the conduct part of a business process, structure or arrangement that was designed or implemented with the intent to prevent or shield the Respondent from having such actual knowledge, or was the conduct part of a business process, structure or arrangement implemented for other legitimate reasons that consequently made it difficult or impossible for the Respondent to have actual knowledge?

2. *Reason to Know.* If the Respondent did not have actual knowledge that the conduct took place, did the Respondent have reason to know, or should the Respondent reasonably have known, based on all readily available information and with the exercise of reasonable due diligence, that the conduct would or might take place?

3. *Management Involvement.* In the case of an entity, was the conduct undertaken with the explicit or implicit knowledge of senior management, or was the conduct undertaken by personnel outside the knowledge of senior management? If the apparent violation was undertaken without the knowledge of senior management, was there oversight intended to detect and prevent violations, or did the lack of knowledge by senior management result from disregard for its responsibility to comply with applicable regulations and laws?

C. *Harm to Regulatory Program Objectives: The actual or potential harm to regulatory program objectives caused by the conduct giving rise to the apparent violation.* This factor is present where the conduct in question, in purpose or effect, substantially implicates national security, foreign policy or other essential interests protected by the U.S. export control system. Among other things, OEE may consider such factors as the reason for controlling the item to the destination in question; the sensitivity of the item; the prohibitions or restrictions against the recipient of the item; and the licensing policy concerning the transaction (such as presumption of approval or denial). OEE, in its discretion, may consult with other U.S. agencies or with licensing and enforcement authorities of other countries in making its determination. Among the factors OEE may consider in evaluating the harm to regulatory program objectives are:

1. *Implications for U.S. National Security: The impact that the apparent violation had or could potentially have on the national security of the United States.* For example, if a particular export could undermine U.S. military superiority or endanger U.S. or friendly military forces or be used in a military application contrary to U.S. interests, OEE would consider the

implications of the apparent violation to be significant.

2. *Implications for U.S. Foreign Policy: The effect that the apparent violation had or could potentially have on U.S. foreign policy objectives.* For example, if a particular export is, or is likely to be, used by a foreign regime to monitor communications of its population in order to suppress free speech and persecute dissidents, or otherwise used to enable human rights abuses, OEE would consider the implications of the apparent violation to be significant.

D. *Failure to disclose a significant apparent violation.* If a firm (as that term is defined in § 772.1 of the EAR) deliberately chooses not to disclose a significant apparent violation that it has identified, OEE will consider that non-disclosure to be an aggravating factor when assessing what administrative sanctions, if any, will be sought. A deliberate decision not to disclose occurs when a firm uncovers a significant apparent violation that they have committed but then chooses not to file a VSD.

General Factors

E. *Individual Characteristics: The particular circumstances and characteristics of a Respondent.* Among the factors OEE may consider in evaluating individual characteristics are:

1. *Commercial Sophistication: The commercial sophistication and experience of the Respondent.* Is the Respondent an individual or an entity? If an individual, was the conduct constituting the apparent violation for personal or business reasons?

2. *Size and Sophistication of Operations: The size of a Respondent's business operations, where such information is available and relevant.* At the time of the violation, did the Respondent have any previous export experience and was the Respondent familiar with export practices and requirements? Qualification of the Respondent as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable standards of the Small Business Administration, may also be considered.

3. *Volume and Value of Transactions: The total volume and value of transactions undertaken by the Respondent on an annual basis, with attention given to the volume and value of the apparent violations as compared with the total volume and value of all transactions.* Was the quantity and/or value of the exports high, such that a greater penalty may be necessary to serve as an adequate penalty for the violation or deterrence of future violations, or to make the penalty proportionate to those for otherwise comparable violations involving exports of lower quantity or value?

4. *Regulatory History: The Respondent's regulatory history, including OEE's issuance of prior penalties, warning letters, or other administrative actions (including settlements).* OEE will consider a Respondent's past regulatory history, including OEE's issuance of prior penalties, warning letters, or other administrative actions (including settlements). When an acquiring firm takes reasonable steps to

uncover, correct, and voluntarily disclose or cause the voluntary self-disclosure to OEE of conduct that gave rise to violations by an acquired business before the acquisition, OEE typically will not take such violations into account in applying these factors in settling other violations by the acquiring firm.

5. *Other illegal conduct in connection with the export.* Was the transaction in support of other illegal conduct, for example the export of firearms as part of a drug smuggling operation, or illegal exports in support of intellectual property theft, economic espionage or money laundering?

6. *Criminal Convictions.* Has the Respondent previously been convicted of a criminal violation or otherwise entered into a resolution with the Department of Justice or other prosecutorial authority related to a criminal violation?

Note: Where necessary to effective enforcement, the prior involvement in export violation(s) of a Respondent's owners, directors, officers, partners, or other related persons may be imputed to a Respondent in determining whether these criteria are satisfied.

F. *Compliance Program: The existence, nature and adequacy of a Respondent's risk-based BIS compliance program at the time of the apparent violation.* OEE will take account of the extent to which a Respondent complies with the principles set forth in BIS's Export Compliance Guidelines. Information about the Export Compliance Guidelines can be accessed through the BIS website at <http://www.bis.gov/>. OEE will also consider whether a Respondent's export compliance program uncovered a problem, thereby preventing further violations, and whether the Respondent has taken steps to address compliance concerns raised by the violation, to include the submission of a VSD and steps to prevent reoccurrence of the violation that are reasonably calculated to be effective. Conversely, OEE will also consider whether a firm has deliberately failed to voluntarily disclose a significant apparent violation uncovered by a company's export compliance program.

Mitigating Factors

G. *Remedial Response.* The Respondent's corrective action taken in response to the apparent violation. Among the factors OEE may consider in evaluating the remedial response are:

1. The steps taken by the Respondent upon learning of the apparent violation. Did the Respondent immediately stop the conduct at issue? Did the Respondent undertake to file a VSD?

2. In the case of an entity, the processes followed to resolve issues related to the apparent violation. Did the Respondent discover necessary information to ascertain the causes and extent of the apparent violation, fully and expeditiously? Was senior management fully informed? If so, when?

3. In the case of an entity, whether it adopted new and more effective internal controls and procedures to prevent the occurrence of similar apparent violations. If the entity did not have a BIS compliance program in place at the time of the apparent

violation, did it implement one upon discovery of the apparent violation? If it did have a BIS compliance program, did it take appropriate steps to enhance the program to prevent the recurrence of similar violations? Did the entity provide the individual(s) and/or managers responsible for the apparent violation with additional training, and/or take other appropriate action, to ensure that similar violations do not occur in the future?

4. Where applicable, whether the Respondent undertook a thorough review to identify other apparent violations.

H. *Exceptional Cooperation with OEE: The nature and extent of the Respondent's cooperation with OEE, beyond those actions set forth in Factor F.* Among the factors OEE may consider in evaluating exceptional cooperation are:

1. Did the Respondent provide OEE with all relevant information regarding the apparent violation at issue in a timely, comprehensive and responsive manner (whether or not voluntarily self-disclosed), including, if applicable, overseas records?

2. Did the Respondent research and disclose to OEE relevant information regarding any other apparent violations caused by the same course of conduct?

3. Did the Respondent provide substantial assistance in another OEE investigation of another person who may have violated the EAR?

4. Has the Respondent previously made substantial voluntary efforts to provide information (such as providing tips that led to enforcement actions against other parties) to Federal law enforcement authorities in support of the enforcement of U.S. export control regulations? Has the Respondent previously disclosed information regarding the conduct of others that led to enforcement action by OEE?

5. Did the Respondent enter into a statute of limitations tolling agreement, if requested by OEE (particularly in situations where the apparent violations were not immediately disclosed or discovered by OEE, in particularly complex cases, and in cases in which the Respondent has requested and received additional time to respond to a request for information from OEE)? If so, the Respondent's entering into a tolling agreement may be deemed a mitigating factor.

Note: A Respondent's refusal to enter into a tolling agreement will not be considered by OEE as an aggravating factor in assessing a Respondent's cooperation or otherwise under the Guidelines.

I. *License Was Likely To Be Approved.* Would an export license application have likely been approved for the transaction had one been sought? Would the export have qualified for a License Exception? Some license requirements sections in the EAR also set forth a licensing policy (*i.e.*, a statement of the policy under which license applications will be evaluated), such as a general presumption of denial or case by case review. OEE may also consider the licensing history of the specific item to that destination and if the item or end-user has a history of export denials.

Other Relevant Factors Considered on a Case-by-Case Basis

J. *Related Violations.* Frequently, a single export transaction can give rise to multiple violations. For example, an exporter who inadvertently misclassifies an item on the Commerce Control List may, as a result of that error, export the item without the required export license and file Electronic Export Information (EEI) to the Automated Export System (AES) that both misstates the applicable Export Control Classification Number (ECCN) and erroneously identifies the export as qualifying for the designation "NLR" (no license required) or cites a license exception that is not applicable. In so doing, the exporter commits three violations: one violation of § 764.2(a) of the EAR for the unauthorized export and two violations of § 764.2(g) of the EAR for the two false statements on the EEI filing to the AES. OEE will consider whether the violations stemmed from the same underlying error or omission, and whether they resulted in distinguished or separate harm. OEE generally does not charge multiple violations on a single export, and would not consider the existence of such multiple violations as an aggravating factor in and of itself. It is within OEE's discretion to charge separate violations and settle the case for a penalty that is less than would be appropriate for unrelated violations under otherwise similar circumstances, or to charge fewer violations and pursue settlement in accordance with that charging decision. OEE generally will consider inadvertent, compounded clerical errors as related and not separate infractions when deciding whether to bring charges and in determining if a case is egregious.

K. *Multiple Unrelated Violations.* In cases involving multiple unrelated violations, OEE is more likely to seek a denial of export privileges and/or a greater monetary penalty than OEE would otherwise typically seek. For example, repeated unauthorized exports could warrant a denial order, even if a single export of the same item to the same destination under similar circumstances might warrant just a civil monetary penalty. OEE takes this approach because multiple violations may indicate serious compliance problems and a resulting greater risk of future violations. OEE may consider whether a Respondent has taken effective steps to address compliance concerns in determining whether multiple violations warrant a denial order in a particular case.

L. *Other Enforcement Action.* Other enforcement actions taken by Federal, State, or local agencies against a Respondent for the apparent violation or similar apparent violations, including whether the settlement of alleged violations of BIS regulations is part of a comprehensive settlement with other Federal, State, or local agencies. Where an administrative enforcement matter under the EAR involves conduct giving rise to related criminal or civil charges, OEE may take into account the related violations, and their resolution, in determining what administrative sanctions are appropriate under part 766 of the EAR (15 CFR part 766). A criminal conviction indicates serious, willful misconduct and an accordingly high risk of future violations, absent effective

administrative sanctions. However, entry of a guilty plea can be a sign that a Respondent accepts responsibility for complying with the EAR and will take greater care to do so in the future. In appropriate cases where a Respondent is receiving substantial criminal penalties, OEE may find that sufficient deterrence may be achieved by lesser administrative sanctions than would be appropriate in the absence of criminal penalties. Conversely, OEE might seek greater administrative sanctions in an otherwise similar case where a Respondent is not subjected to criminal penalties. The presence of a related criminal or civil disposition may distinguish settlements among civil penalty cases that appear otherwise to be similar. As a result, the factors set forth for consideration in civil penalty settlements will often be applied differently in the context of a “global settlement” of both civil and criminal cases, or multiple civil cases, and may therefore be of limited utility as precedent for future cases, particularly those not involving a global settlement.

M. Future Compliance/Deterrence Effect. The impact an administrative enforcement action may have on promoting future compliance with the regulations by a Respondent and similar parties, particularly those in the same industry sector.

N. Other Factors That OEE Deems Relevant. On a case-by-case basis, in determining the appropriate enforcement response and/or the amount of any civil monetary penalty, OEE will consider the totality of the circumstances to ensure that its enforcement response is proportionate to the nature of the violation.

IV. Civil Penalties

A. Determining What Sanctions Are Appropriate in a Settlement

OEE will review the facts and circumstances surrounding an apparent violation and apply the Factors Affecting Administrative Sanctions in section III of this supplement in determining the appropriate sanction or sanctions in an administrative case, including the appropriate amount of a civil monetary penalty where such a penalty is sought and imposed. Penalties for settlements reached after the initiation of litigation will usually be higher than those described by these guidelines.

B. Amount of Civil Penalty

1. Determining Whether a Case is Egregious. In those cases in which a civil monetary penalty is considered appropriate, the OEE Director will make a determination as to whether a case is deemed “egregious” for purposes of the base penalty calculation. If a case is determined to be egregious, the OEE Director also will also determine the appropriate base penalty amount within the range of base penalty amounts prescribed in paragraphs IV.B.2.a.iii and iv of this supplement. These determinations will be based on an analysis of the applicable factors. In making these determinations, substantial weight will generally be given to Factors A (“willful or reckless violation of law”), B (“awareness of conduct at issue”), C (“harm to regulatory program objectives”), and D (“individual characteristics”), with particular emphasis on Factors A, B, and C.

A case will be considered an “egregious case” where the analysis of the applicable factors, with a focus on Factors A, B, and C, indicates that the case represents a particularly serious violation of the law calling for a strong enforcement response.

2. Monetary Penalties in Egregious Cases and Non-Egregious Cases. The civil monetary penalty amount shall generally be calculated as follows, except that neither the base penalty amount nor the penalty amount will exceed the applicable statutory maximum:

a. Base Category Calculation and Voluntary Self-Disclosures.

i. In a non-egregious case, if the apparent violation is disclosed through a voluntary self-disclosure, the base penalty amount shall be up to one-half of the transaction value.

ii. In a non-egregious case, if the apparent violation comes to OEE’s attention by means other than a voluntary self-disclosure, the base penalty amount shall be up to the transaction value.

iii. In an egregious case, if the apparent violation is disclosed through a voluntary self-disclosure, the base penalty amount shall be an amount up to one-half of the statutory maximum penalty applicable to the violation.

iv. In an egregious case, if the apparent violation comes to OEE’s attention by means other than a voluntary self-disclosure, the base penalty amount shall be an amount up to the statutory maximum penalty applicable to the violation.

v. The applicable statutory maximum civil penalty per violation of the Export Control Reform Act (ECRA) of 2018 is a fine defined in ECRA and adjusted in accordance with U.S. law, e.g., the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701), which in 2024 was \$364,992, or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

The following matrix represents the base penalty amount of the civil monetary penalty for each category of violation:

BASE PENALTY MATRIX

Voluntary self-disclosure?	Egregious case?	
	NO	YES
YES	(1) Up to One-Half of the Transaction Value	(3) Up to One-Half of the Applicable Statutory Maximum.
NO	(2) Up to the Transaction Value	(4) Up to the Applicable Statutory Maximum.

b. Adjustment for Applicable Relevant Factors. The base penalty amount of the civil monetary penalty will be adjusted to reflect applicable Factors for Administrative Action set forth in section III of these guidelines. The Factors may result in a penalty amount that is lower or higher than the base penalty amount depending upon whether they are aggravating or mitigating and how they, in the discretion of OEE, apply in combination in a particular case.

C. Settlement Procedures

The procedures relating to the settlement of administrative enforcement cases are set forth in § 766.18 of the EAR.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2024–21013 Filed 9–12–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA–2024–N–4058]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Clozapine Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is

classifying the clozapine test system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the clozapine test system's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective September 16, 2024. The classification was applicable on April 16, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Kotarek, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3504, Silver Spring, MD 20993-0002, 301-796-2718, Joseph.Kotarek@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the clozapine test system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval.

We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially

equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 24, 2019, FDA received Saladax Biomedical, Inc.'s request for De Novo classification of the MyCare Psychiatry Clozapine Assay Kit. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 16, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.3245.¹ We have named the generic type of device clozapine test system, and it is identified as a device intended to measure clozapine in human specimens. Measurements obtained by this device are used in monitoring levels of clozapine to ensure appropriate therapy in patients with treatment-resistant schizophrenia.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—CLOZAPINE TEST SYSTEM RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Incorrect test results	Certain design verification and validation activities and Certain labeling information.

¹ FDA notes that the **ACTION** caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate

that the document amends the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the "Document Drafting Handbook."

TABLE 1—CLOZAPINE TEST SYSTEM RISKS AND MITIGATION MEASURES—Continued

Identified risks to health	Mitigation measures
Incorrect interpretation of test results	Certain design verification and validation activities and Certain labeling information.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 862.3245 to subpart D to read as follows:

§ 862.3245 Clozapine test system.

(a) *Identification.* A clozapine test system is a device intended to measure clozapine in human specimens. Measurements obtained by this device are used in monitoring levels of clozapine to ensure appropriate therapy in patients with treatment-resistant schizophrenia.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include the following:

(i) Precision study data that demonstrates precision that is clinically appropriate, as determined by FDA, for the clozapine test system. Precision studies must include a minimum of three samples containing different concentrations of clozapine including near medical decision points and throughout the expected therapeutic range of clozapine. Samples near the medical decision points must be clinical specimens collected from patients taking clozapine;

(ii) Method comparison data that demonstrates accuracy that is clinically acceptable, as determined by FDA, for the clozapine test system;

(iii) Data from studies that demonstrate that the device is free from clinically significant interference, as determined by FDA, from commonly co-administered medications that are used in patients with treatment-resistant schizophrenia; and

(iv) Data from studies that demonstrate that the device is free from clinically significant cross-reactivity, as determined by FDA, from major circulating metabolites found in the intended use population.

(2) The labeling required under § 809.10 of this chapter must include a limiting statement conveying that the assay should only be used in

conjunction with information available from clinical evaluations and other diagnostic procedures and that results from the assay alone should not be used in making treatment decisions.

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20895 Filed 9–13–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2024–N–4061]

Medical Devices; Immunology and Microbiology Devices; Classification of the Device To Detect or Measure Nucleic Acid From Viruses Associated With Head and Neck Cancers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the device to detect or measure nucleic acid from viruses associated with head and neck cancers into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the device to detect or measure nucleic acid from viruses associated with head and neck cancers' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective September 16, 2024. The classification was applicable on May 11, 2020.

FOR FURTHER INFORMATION CONTACT: Kim Davis, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3220, Silver Spring, MD 20993–0002, 301–796–1049, Kim.Davis@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device to detect or measure nucleic acid from viruses associated with head and neck cancers as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807)).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food

and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On June 24, 2019, FDA received Advance Sentry Corp.’s request for De Novo classification of the NP Screen.

FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 11, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3236.¹ We have named the generic type of device as device to detect or measure nucleic acid from viruses associated with head and neck cancers, and it is identified as an in vitro diagnostic test for prescription use in the detection of viral nucleic acid in nasopharyngeal or oropharyngeal cellular specimens from patients with signs and symptoms of head and neck cancer. The test result is intended to be used in conjunction with other clinical information to aid in assessing the clinical status of virus-associated head and neck cancers and/or the likelihood that head and neck cancer is present.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—DEVICE TO DETECT OR MEASURE NUCLEIC ACID FROM VIRUSES ASSOCIATED WITH HEAD AND NECK CANCERS RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
False test results	Use of certain specimen collection and transport devices; Certain labeling information; and Certain design verification and validation.
Failure to correctly interpret the test results	Certain labeling information.

FDA has determined that special controls, in combination with the

general controls, address these risks to health and provide reasonable assurance

of safety and effectiveness. For a device to fall within this classification, and

¹ FDA notes that the **ACTION** caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to indicate

that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

- 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

- 2. Add § 866.3236 to subpart D to read as follows:

§ 866.3236 Device to detect or measure nucleic acid from viruses associated with head and neck cancers.

(a) *Identification.* A device to detect or measure nucleic acid from viruses associated with head and neck cancers is an in vitro diagnostic test for prescription use in the detection of viral nucleic acid in nasopharyngeal or oropharyngeal cellular specimens from patients with signs and symptoms of head and neck cancer. The test result is intended to be used in conjunction with other clinical information to aid in assessing the clinical status of virus-associated head and neck cancers and/or the likelihood that head and neck cancer is present.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Any device used for specimen collection and transport must be FDA-cleared, -approved, or -classified as 510(k) exempt (standalone or as part of a test system) for the collection of human specimens; alternatively, the sample collection device must be cleared in a premarket submission as a part of this device.

(2) The labeling required under § 809.10(b) of this chapter must include, as determined to be appropriate by FDA:

(i) An intended use statement that includes the following:

(A) The analyte(s) detected by the device;

(B) Data output of the device (qualitative, semiquantitative, or quantitative);

(C) The specimen types with which the device is intended for use;

(D) The clinical indications appropriate for test use (e.g., in conjunction with endoscopy);

(E) The intended use populations (e.g., signs and symptoms, ethnicity); and

(F) The intended use location(s) (e.g., specific name and location of testing facility or facilities).

(ii) A detailed device description, including reagents, instruments, ancillary materials, specimen collection and transport devices, controls, and a detailed explanation of the methodology, including all pre-analytical methods for processing of specimens.

(iii) A detailed explanation of the interpretation of results.

(iv) Limiting statements indicating:

(A) The device is not intended for use in screening for head and neck cancer in asymptomatic populations.

(B) Results of the device are not predictive of a patient's future risk of head and neck cancer.

(C) Patients who test negative for the virus should be managed in accordance

with the standard of care, based on the assessment of endoscopy and/or other clinical information by a licensed healthcare professional.

(D) Results of the device are not intended to be used as the sole basis for determining the need for biopsy or for any other patient management decision.

(3) Design verification and validation must include the following:

(i) A detailed device description including pre-analytical specimen processing, assay technology, target region, primer/probe sequences, reagents, controls, instrument requirements, and the computational path from collected raw data to reported result.

(ii) Detailed documentation and results from analytical performance studies, including characterization of the cutoff(s), limit of detection, limit of quantitation, precision (including multisite reproducibility, if applicable), inclusivity, cross-reactivity, interference, carryover/cross-contamination, reagent stability, and specimen/sample stability, as determined to be appropriate by FDA.

(iii) Detailed documentation of a clinical performance study that includes patients from the intended use population, including the clinical study protocol, with a predefined statistical analysis plan, and a clinical study report with testing results and results of all statistical analyses.

(iv) A detailed description of the impact of any software, including software applications and software incorporated in hardware-based devices, on the device's functions.

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20896 Filed 9–13–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2024–N–4082]

Medical Devices; Therapeutic Devices; Classification of the Pediatric Continuous Renal Replacement Therapy System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is

classifying the pediatric continuous renal replacement therapy system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the pediatric continuous renal replacement therapy system's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective September 16, 2024. The classification was applicable on April 29, 2020.

FOR FURTHER INFORMATION CONTACT:

Gema Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2530, Silver Spring, MD 20993-0002, 301-796-6519, Gema.Gonzalez@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the pediatric continuous renal replacement therapy system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 9, 2018, FDA received Medtronic, Inc.'s request for De Novo classification of the CARPEDIEM System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are

insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 29, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 876.5861.¹ We have named the generic type of device pediatric continuous renal replacement therapy system, and it is identified as a device intended for use as an artificial kidney system for the management of pediatric patients with acute kidney injury and/or fluid overload by performing such therapies as hemodialysis, hemofiltration, hemodiafiltration, and isolated ultrafiltration. Using a hemodialyzer with a semipermeable membrane, the hemodialysis system removes toxins or excess fluid from the patient's blood using the principles of convection (via ultrafiltration) and/or diffusion (via a concentration gradient in dialysate). The hemodialysis delivery machine, with an automated ultrafiltration controller, controls and monitors the parameters related to this processing, including the rate at which blood and dialysate are pumped through the system, and the rate at which fluid is removed from the patient. During treatment, a patient's blood is circulated through the blood tubing set connected to the hemodialyzer's blood compartment. Blood access devices and accessories for hemodialysis required for the prescribed treatment are regulated under 21 CFR 876.5540.

FDA has identified the following risks to health associated specifically with this type of device and the measures

¹ FDA notes that the **ACTION** caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

required to mitigate these risks in table 1.

TABLE 1—PEDIATRIC CONTINUOUS RENAL REPLACEMENT THERAPY SYSTEM RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation, Pyrogenicity testing, and Non-clinical performance testing.
Death	Labeling, Clinical performance testing, and Usability testing.
Infection	Labeling, Reprocessing validation, Pyrogenicity testing, Shelf life testing, and Usability testing.
Inadequate or incomplete treatment	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; Usability testing; and Software verification, validation, and hazard analysis.
Clearance of essential blood substances or medications	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; Usability testing; and Software verification, validation, and hazard analysis.
Blood loss or blood cell destruction	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; and Software verification, validation, and hazard analysis.
Thermal injury	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; Usability testing; and Software verification, validation, and hazard analysis.
Blood leak into the dialysis fluid	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; and Software verification, validation, and hazard analysis.
Fluid imbalance	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; and Software verification, validation, and hazard analysis.
Air embolism	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; Usability testing; and Software verification, validation, and hazard analysis.
Fluid pump(s) reversal resulting in air infusion via the arterial bloodline	Non-clinical performance testing; Clinical performance testing; Labeling; Shelf-life testing; Usability testing; and Software, verification, validation, and hazard analysis.
Electrical shock	Electrical safety testing.
Electromagnetic interference with other devices/equipment	Electromagnetic compatibility (EMC) testing.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in

class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.5861 to subpart F to read as follows:

§ 876.5861 Pediatric continuous renal replacement therapy system.

(a) *Identification.* A pediatric continuous renal replacement therapy hemodialysis system is a device intended for use as an artificial kidney system for the management of pediatric patients with acute kidney injury and/or fluid overload by performing such therapies as hemodialysis, hemofiltration, hemodiafiltration, and isolated ultrafiltration. Using a hemodialyzer with a semipermeable membrane, the hemodialysis system removes toxins or excess fluid from the

patient's blood using the principles of convection (via ultrafiltration) and/or diffusion (via a concentration gradient in dialysate). The hemodialysis delivery machine, with an automated ultrafiltration controller, controls and monitors the parameters related to this processing, including the rate at which blood and dialysate are pumped through the system, and the rate at which fluid is removed from the patient. During treatment, a patient's blood is circulated through the blood tubing set connected to the hemodialyzer's blood compartment. Blood access devices and accessories for hemodialysis required for the prescribed treatment are regulated under § 876.5540.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must confirm the safety and the accuracy, precision, and reproducibility of the non-clinical performance data under anticipated conditions of use.

(2) Usability testing must demonstrate that a user can correctly use the hemodialysis delivery device based solely on reading the instructions for use.

(3) Non-clinical performance testing data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Hemodialysis delivery system performance testing must include:

(A) Fluid flow accuracy testing; and
(B) Functional testing of system components including sensors, pumps, and scales to acceptance criteria.

(ii) Hemodialyzer performance testing must include:

(A) Ultrafiltration;
(B) Blood and dialysate pressure drop;
(C) Clearance rates;
(D) Sieving coefficients;
(E) Mechanical hemolysis;
(F) Structural integrity;
(G) Blood compartment integrity;
(H) Volume of the blood

compartment; and

(I) Chemical analysis of the dialyzer membrane.

(iii) Blood tubing set performance testing must include:

(A) Pressure leak testing;
(B) Worst-case endurance testing;
(C) Priming volume assessment;
(D) Tensile testing of joints and materials of all tubing segments;
(E) Pressure transducer leak testing;
(F) Clamp occlusion;
(G) Mechanical hemolysis; and
(H) Kink testing.

(4) Software verification, validation, and hazard analysis must be performed.

(5) Performance data must demonstrate the electromagnetic compatibility (EMC), electrical safety, and wireless compatibility of the device.

(6) The tissue-contacting components of the device must be demonstrated to be biocompatible.

(7) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(8) Performance data must validate the reprocessing instructions for the reusable components of the device.

(9) The patient-contacting components of the device must be demonstrated to be non-pyrogenic.

(10) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(11) Device labeling must include:

(i) Hemodialysis delivery system labeling must provide detailed information regarding the safe use of the dialysis machine, including:

(A) Overall description of the device and individual components or accessories labeled for use with the delivery system;

(B) Description of the safety-related components included in the system;

(C) Identification of operational parameters;

(D) Alarms and troubleshooting information;

(E) Cleaning, disinfection, and preventative maintenance procedures; and

(F) A statement that the device is intended for use by operators trained in the administration of continuous renal replacement therapy and in the management of its complications.

(ii) Hemodialyzer labeling must include:

(A) Description of compatibility;
(B) Shelf life;
(C) Storage conditions;

(D) Instructions for the preparation of the hemodialyzer, initiation of dialysis, troubleshooting, and discontinuance of dialysis;

(E) Membrane surface area, priming (blood) volume, maximum transmembrane pressure, maximum blood flow and maximum dialysate rate for each model;

(F) Summary of the in vitro performance data; and

(G) A non-pyrogenic statement.

(iii) Blood tubing set labeling must provide detailed information regarding the safe use of the device, including:

(A) Description of compatibility;
(B) Shelf life;
(C) Storage conditions;
(D) Identification of the components in the package;

(E) Total length of the arterial and venous tubing sets;

(F) Outer diameter (OD) of the pump segment;

(G) Priming volume;

(H) Identification of the hemodialysis delivery systems which are compatible with the blood tubing set;

(I) Identification of the largest gauge needle that can be used with the injection port, if applicable; and

(J) Identification of the maximum operating pressures for the transducer protectors.

Dated: September 11, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20999 Filed 9–13–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 214

[Docket No. FR–6388–F–02]

RIN 2502–AJ70

Modernizing the Delivery of Housing Counseling Services

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development (HUD) is issuing this final rule to update HUD's regulations that require participating agencies to provide in-person counseling to clients that prefer this format to reflect advances in technology, align with client engagement preferences, and preserve consumer protections. The final rule amends HUD's regulations to allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that choose not to provide in-person services are required to refer clients to local providers that provide such services, when requested. After considering public comments received in response to the proposed rule HUD published on October 25, 2023, this final rule adopts the proposed rule without change.

DATES: Effective October 16, 2024.

FOR FURTHER INFORMATION CONTACT:

David Valdez, Senior Housing Program Specialist, Department of Housing and Urban Development, 1331 Lamar St. Suite 550, Houston, TX 77002, telephone 713–718–3178 (this is not a

toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) (Section 106) authorizes HUD's Housing Counseling program (see Sections 106(a)(1)(iii) and 106(a)(2)). On October 25, 2023, HUD published the “Modernizing the Delivery of Housing Counseling Services” proposed rule (“the proposed rule”) in the **Federal Register**, at 88 FR 73298, to revise the current regulations governing HUD's Housing Counseling program to align with client engagement preferences, and to preserve consumer protections, while leaving in place existing guardrails that ensure participating agencies demonstrate knowledge and a connection to the community they serve, whether they choose to do so by providing virtual, in-person, or hybrid services.

As described in the proposed rule, on September 28, 2007, HUD published a final rule titled, “Housing Counseling Program,” at 72 FR 55637, which established regulations for HUD's Housing Counseling program (see 24 CFR 214.103(l) and 24 CFR 214.300, in particular). These regulations had not been amended since they were established. Section 214.300(a)(3) required agencies that provide housing counseling services to provide in-person counseling services at one of the agency's facilities or an alternate location to clients that preferred that format. When this requirement was adopted, housing counseling and education were primarily conducted in-person and the conventional wisdom was that in-person service was the most effective service delivery method. However, alternatives to in-person service have also proven to be effective.

In 2020, due to ongoing public health concerns around the spread of Coronavirus Disease 2019 (COVID–19), HUD issued a Temporary Partial Waiver of 24 CFR 214.300(a)(3), *In-Person Housing Counseling Requirement*, that allowed housing counseling agencies to utilize alternative methods to conduct housing counseling and education with clients in lieu of meeting in-person. Feedback received regarding this waiver indicated that these alternative methods were more practical, cost-effective, and

accessible, and did not lead to adverse compliance issues or negative financial impacts. This feedback, increased consumer preference for virtual service delivery, and reduced burdens and costs for participating agencies, all weigh in favor of modernizing the current regulations.

HUD's proposed rule, then, proposed amending the regulations such that participating agencies must maintain at least one facility and may provide remote housing counseling. Additional details about the proposed rule may be found at 88 FR 73298 (October 25, 2023).

II. Final Rule

This final rule adopts the proposed rule without change. This rule will help reduce the costs of providing housing counseling by allowing participating agencies to provide housing counseling services at a facility or at an alternate location, via telephone, or via collaborative online software. All facilities must have an identified, private space available for the provision of counseling services, whether those services are in-person or virtual, and housing counseling agencies that do not provide in-person counseling services must refer clients to agencies that provide in-person counseling services upon a client's request. This rule does not change the requirements that every housing counseling agency must continue to meet for HUD approval as a counseling agency, regardless of the setting or format of housing counseling services, including having functioned for at least one year in the geographical area(s) the agency identified in its housing counseling work plan, having sufficient resources to implement that proposed work plan, and being able to demonstrate knowledge of local housing markets and community resources.

III. The Public Comments

HUD received 33 public comments on the proposed rule from various interested parties, including housing finance companies, housing counseling service agencies (including HUD-approved agencies), housing counselors, state housing agency associations, community development and other nonprofit organizations, and other individuals and entities.

Support for the Rule

Most commenters supported HUD's proposal and supported providing individuals with options for different formats and types of housing counseling services, including telephonic and online services. Some commenters cited general benefits such as increased

flexibility and convenience, and reduced costs, for clients, consumers, those providing services such as housing counseling agencies and social workers, and landlords.

Some commenters focused on benefits that the shift to virtual and other housing counseling service formats has already provided. Some commenters stated that, as shown during the COVID-19 pandemic, the temporary partial waiver (TPW) of in-person housing counseling requirements and the use of virtual services was not only implementable but resulted in benefits such as an increase in the area served and number of clients served, more effective use of agency funding, a reduction in transportation and scheduling burdens, and the prevention of the spread of disease and illnesses. One commenter said that reducing costs would permit more Americans to access housing counseling services, and that the proposed rule took these costs and benefits into account. Another commenter noted that the move to virtual options has especially benefited those clients living at or below 80% of the area's median income by reducing childcare and transportation needs and costs. Some commenters also emphasized that their organizations have been able to provide more and more accessible services to rural communities and to those with disabilities.

Some commenters focused on benefits that the rule's changes, if implemented, would provide in the future. Some commenters stated that HUD's proposed changes would continue to help individuals in rural, suburban, and remote areas, particularly those who do not drive or own a vehicle. Other commenters stated that other barriers would be eliminated, such as social anxiety concerns associated with in-person counseling and long lines or wait times.

Some commenters said that the use of virtual and alternative housing counseling methods and a referral system for in-person services during the period of the TPW did not create adverse compliance or financial impacts. One commenter also stated that there would not be future adverse impacts.

One commenter encouraged HUD to promote access to all types of modern resources that assist housing counseling service providers. Another commenter stated that the government should respond to consumer preferences as communicated through research studies, including preferences for more telephonic options.

One commenter stated that most consumers in the commenter's community prefer virtual services and do not want to return to, and do not often request, in-person formats. This commenter also explained that electronic communication better facilitates good recordkeeping practices such as date- and time-stamping client files and documents.

One commenter agreed with HUD's proposal to leave other requirements of the housing counseling program (those not discussed in the proposed rule) unchanged.

HUD Response: HUD appreciates the commenters' support and feedback. This final rule aims to modernize the delivery of housing counseling by allowing the use of alternative communication methods to reflect advances in technology and shifting client engagement preferences. HUD agrees with the commenters that virtual or telephonic housing counseling increases flexibility, promotes convenience and access, responds to consumer preferences, and reduces cost barriers for clients and participating agencies. HUD believes that the housing counseling service formats provided for in this rulemaking, including telephonic, virtual, and collaborative online software, will sufficiently modernize a participating agency's delivery of housing counseling services and related recordkeeping practices.

HUD also agrees with commenters who state that this final rule creates the opportunity to broaden the reach of housing counseling. HUD recognizes that difficulties for many groups may include the distance and cost of travel to the nearest housing counseling agency, a lack of available transportation, or scheduling issues. Allowing for alternative methods of housing counseling will increase access to services for those groups of individuals mentioned by the commenters, including individuals with disabilities that may experience difficulty traveling, and those residing in rural areas that may face similar difficulties.

HUD agrees with the commenters that state there are already proven benefits to this change and continued positive outcomes are likely. As some commenters indicated, HUD allowed for a temporary partial waiver of the in-person housing counseling requirement during the COVID-19 pandemic. During the pandemic, agencies adapted to alternative methods of service delivery that HUD determined were more practical, cost-effective, accessible, and without adverse compliance issues or negative financial impacts.

Opposition to the Rule

One commenter opposed HUD's proposal. This commenter stated that persons seeking housing counseling are more likely than others to not have the ability to negotiate financing and real estate on their own, and online or remote interactions may increase barriers for those most at risk and in the most need.

HUD Response: HUD believes that barriers to housing counseling should be eliminated and HUD will continue to review options that reduce barriers to housing counseling. Research shows that the impact of in-person services is no different from the impact of remote services.¹ HUD continues to support in-person services to address each client's unique situation. Increasing access to alternative methods of counseling does not diminish the importance of in-person counseling. Rather, it promotes choice in how a client meets their housing goal or addresses their housing problem. HUD's revised regulations promote choice between virtual and in-person services by allowing all participating agencies to offer virtual and remote services, but this does not preclude participating agencies from offering in-person services. Additionally, any client seeking in-person housing counseling may express this preference at any time, and, if the participating agency does not provide in-person services, it must help ensure that that client's preference is fulfilled by referring the client to a participating agency that does provide in-person services.

Comments About "Guardrails To Mitigate Risks"

Some commenters supported HUD's proposal to include "safeguards" or "guardrails" such as requiring participating agencies to have at least one year of experience in their chosen geographic area and ensuring that housing counselors understand local housing programs. A commenter stated that, regardless of the form or mode through which housing counseling services are provided, these safeguards are essential to ensure that such services continue to be efficient.

One commenter requested clarification of the requirement for housing counselors to have functioned for at least a year in the geographical area set forth in the work plan. The

¹ <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Long-Term-Impact-Report-HUD-First-Time-Homebuyer-Education-Counseling-Demonstration.pdf> at pgs. 64–65. This report was conducted by Abt Associates in partnership with participating lenders and housing counseling agencies.

commenter suggested that virtual work should count toward this requirement and that this not be limited to having maintained a facility within the geographical area. Specifically, the commenter suggested that virtual work as provided under a contract with a housing market participant, such as a state agency or national non-profit working within the geographic area, should be evidence of such a working relationship.

One commenter said that, as drafted, the proposed rule's guardrails may pose barriers to a housing counseling agency's ability to hire qualified staff who may not be from the area. The commenter suggested that HUD change its regulatory requirements to capture the following: "Housing Counselors must possess knowledge, or be able to attain knowledge, of the local housing market, establish working relationships with private and public community resources, demonstrating that the agency maintains a sufficient community base."

HUD Response: HUD agrees with the commenters that support the guardrails in place. The regulations will continue to require participating agencies to have functioned for at least a year in the geographic area set forth in their work plan (see 24 CFR 214.103(d)), and housing counseling staff to possess a working knowledge of HUD's housing and single-family mortgage insurance programs, other state and local housing programs available in the community, consolidated plans, and the local housing market (see 24 CFR 214.103(h)). This experience and knowledge may be acquired through virtual or in-person work in the geographic area. These provisions ensure that participating agencies demonstrate knowledge and a connection to the community they serve, whether they choose to do so by providing virtual, in-person, or hybrid services.

HUD recognizes that hiring qualified housing counseling staff may be challenging at times; however, HUD does not believe that the guardrails contribute to this challenge. Instead, promoting the choice to deliver counseling services via alternative methods may expand hiring opportunities by eliminating the barrier that physical presence in a geographical area may pose. Housing Counseling Agencies may also gain experience and knowledge of community resources via the use of software that connects counselors with local resources and aids in connecting clients to social service providers or programs in their area.

Comments Requesting Clarification of "Collaborative Online Software"

One commenter requested that HUD clarify the meaning of "collaborative online software," as the meaning was not clear in the proposed rule, and that HUD provide examples of which online software is sufficient and has the necessary security in place.

HUD Response: HUD appreciates the opportunity to further clarify the term "collaborative online software" as mentioned in the proposed rule. This term encompasses a range of virtual meeting tools designed to support collaboration and communication between the counselor and client. Specifically, these tools offer functions such as real-time messaging (chat), video conferencing, and the ability to share and collaborate on documents. Examples of such software include platforms like Zoom, Microsoft Teams, and Google Workspace.

Regardless of the collaborative online software chosen, program participants must continue to follow HUD's client confidentiality and privacy standards. HUD's regulations at 24 CFR 214.315 require that all information remains secure and private, no matter the method of service delivery. HUD encourages all participating agencies to conduct thorough due diligence when selecting any software to ensure it complies with all applicable security requirements and privacy laws, thereby safeguarding the integrity of client information and interactions.

Comments Expressing Concern That The Rule Will Result in the Unavailability of In-Person Housing Counseling for Clients Who Need or Prefer That Format of Service Provision

Some commenters emphasized that HUD's regulations still need to be inclusive of those who need or would prefer in-person services. Some commenters stated that this flexibility is particularly important for the elderly, disabled persons, persons living on Native Lands, those who cannot access or use technology, and those who do not want to discuss the required information in a distanced, virtual format.

Some commenters stated that the proposed rule already attempts to address these concerns by requiring participating agencies that choose not to provide in-person services to refer clients to local providers that do provide such services, when requested. One commenter stated that, even with this provision, there must be mechanisms in place to ensure there are enough providers who provide in-

person housing counseling to meet any demand or need. Additionally, the commenter stated that participating housing counseling agencies should provide information about in-person and virtual housing counseling service options before any such services have commenced, in addition to when in-person services are requested, to provide consumers with more control in how they receive housing counseling services.

One commenter asserted that HUD's proposal lacks any requirements meant to address those with accessibility needs and older adults, which may result in additional barriers for these vulnerable populations when they seek out housing counseling services and ultimately prevent them from benefitting from proposed changes.

HUD Response: HUD's housing counseling program recognizes the importance of continuing to serve those clients who need or prefer in-person services, including individuals who belong to the groups identified by commenters and others who lack sufficient access to the necessary technology. The updated regulations do not preclude participating agencies from continuing to maintain a physical presence in the communities they serve and, if an agency is unable to serve the client in the format the client prefers or requires, the agency must, upon the client's request, refer the client to another participating agency.

The proposed rule amended the text of 24 CFR 214.300 to remind participating agencies that telephonic and collaborative online software, and any other form of counseling, must be accessible for persons with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Additionally, under HUD's existing regulations at 24 CFR 214.103(l)(3), which HUD is not substantively changing through this rulemaking, all housing counseling facilities of the HUD-approved agency and its branches, affiliates, and subgrantees must provide accessibility features or make alternate accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). 24 CFR 214.103(l)(3). This includes the requirement that a participating agency must ensure effective communication with individuals with disabilities, including through the provision of appropriate auxiliary aids and services,

regardless of whether it provides in-person or alternative format counseling services.

Comments About HUD Grants for Technology and Program Purchases

One commenter strongly urged HUD to consider allowing the use of HUD grants for technology and program purchases to further assist housing counseling agencies. This may include, but is not limited to, purchases of internet hotspots and/or devices to enhance access to areas without reliable internet and/or cellphone coverage.

HUD Response: The commenter's point is beyond the scope of this rulemaking; however, HUD's housing counseling program recognizes the importance of technology and internet access in an increasingly hybrid and virtual office environment. Pursuant to the annual Grant Agreement and Uniform Guidance, HUD already allows reimbursement for technology purchases.

Comments About Online Services To Locate Housing Counseling Facilities

One commenter stated that the online services at [hud.gov](https://www.hud.gov) that assist users in locating nearby housing counseling facilities did not work.

HUD Response: HUD publishes information about its housing counseling program and how to locate a housing counseling agency in an individual's locale on the HUD website <https://www.hud.gov/counseling> and the Consumer Financial Protection Bureau's website <https://www.consumerfinance.gov/find-a-housing-counselor/>. If telephonic communication is preferred, please call 800-569-4287 (202-708-1455 TTY).

Comments Requesting New Requirements To Address Limited English Proficiency Concerns

One commenter emphasized the need to ensure that HUD's proposed changes do not inadvertently create barriers for low- and moderate-income Asian American, Native Hawaiian, and Pacific Islander individuals with limited English proficiency (LEP). The commenter recommended that HUD incorporate new provisions through this rulemaking that would help reduce language barriers. For example, the commenter suggested that HUD require that alternative communication meeting tools and methods be equipped with multilingual capabilities; that HUD ensure that housing counseling agencies are adequately resourced to hire and train linguistically capable and culturally competent housing counselors; that HUD ensure that

compensation structures account for the added workload in LEP cases; and that HUD ensure the establishment of robust referral mechanisms that would account for LEP needs in the referral process.

This commenter also urged HUD to consider how to collect disaggregated race and ethnicity data to help service providers reach certain populations. The commenter suggested using the data collection standards recently proposed by the Office of Management and Budget (OMB),² but with additional disaggregation whenever possible.

HUD Response: HUD agrees with the commenter and recognizes the importance of serving clients with limited English proficiency including Asian Americans, Native Hawaiians, and Pacific Islanders. However, many of the commenter's proposed changes are outside the scope of this rulemaking, and HUD's existing regulations account for the commenter's concerns. HUD Housing Counseling Program regulations currently require all participating agencies to maintain "housing counselor(s) who are fluent in the language of the clients they serve, or use the services of an interpreter, or must refer the client to an agency that can meet their client's needs." See 24 CFR 214.103(g)(3). HUD is not proposing to amend this regulation through this rulemaking; this is an existing requirement. However, HUD is, in this rulemaking, emphasizing in new 24 CFR 214.300(a)(4) that regardless of setting or format all participating agencies must continue to meet the requirements of 24 CFR 214.103(g), as well as 214.103(d) and 214.103(h). Additionally, Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps to ensure meaningful access to their programs, services, and activities by individuals with LEP. This and other civil rights requirements apply to the Housing Counseling program. See 24 CFR 214.503 and 5.105.

HUD agrees with the suggestion of using the data collection standards recently proposed by the Office of Management and Budget and already follows OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (89 FR 22182).

² 88 FR 5375, <https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards>.

Comments Suggesting Structural Changes for Housing Counseling Services

One commenter suggested that HUD set up counseling service locations and counselors for first-time and low-income homebuyers that would assist these buyers before closing, to help reduce the complexity of issues and the need for housing counselors later in the process. The commenter suggested that this counseling include basic home maintenance, improvement, and energy management, which would reduce costs for new homeowners and reduce the chances of default and foreclosure. The commenter also urged HUD to help educate new homeowners about how to recognize when they should seek housing counseling.

HUD Response: HUD agrees with the commenter that pre-purchase clients benefit from understanding the obligations of homeownership after purchase, including basic home maintenance, improvement, and energy management. These topics are outside the scope of this rulemaking but are approved housing counseling, education, and outreach topics that participating agencies may provide to and discuss with clients under HUD regulations at 24 CFR 214.300(e) and the HUD Housing Counseling Handbook 7610.1—REV 6, under the section titled, "Approved Housing Counseling, Education, and Outreach Topics."

HUD also agrees with the commenter that homeowners could benefit from resolving or preventing mortgage delinquency and, though this topic is also outside the scope of this rulemaking, this topic is an approved housing counseling, education, and outreach topic that participating agencies may provide to and discuss with clients under HUD regulations at 24 CFR 214.300(e) and the HUD Housing Counseling Handbook 7610.1—REV 6, under the sections titled "Non-Delinquency Post-Purchase Counseling" and "Resolving or Preventing Forward or Reverse Mortgage Delinquency or Default."

Comments Requesting Information About the Housing Counseling Program

One commenter requested more information about HUD's Housing Counseling program.

HUD Response: HUD publishes information about its housing counseling program and how to locate a housing counseling agency in an individual's locale on the HUD website <https://www.hud.gov/counseling>. If telephonic communication is preferred,

please call 800-569-4287 (202-708-1455 TTY).

Comments About HECM Counseling

One commenter suggested that HUD pursue modernization efforts for HECM counseling.

HUD Response: HECM counseling is outside the scope of this rulemaking, but HUD recently clarified, in its HUD Housing Counseling Handbook 7610.1 REV.6, that agencies are allowed to provide HECM counseling using virtual meeting tools designed to support collaboration and communication between the counselor and client.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094, entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”), amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

The final rule allows counseling agencies to provide services through virtual methods of service delivery and to refer clients who prefer in-person counseling to other agencies that offer that service. HUD is not changing other requirements, for example the requirement that a participating agency demonstrate knowledge of and a connection to the community they serve, and the requirement that a participating agency comply with state and local laws in each geographic area in which the participating agency operates. The final rule was not subject to OMB review. The final rule is not a “significant regulatory action” as defined in Section 3(f) of Executive

Order 12866 and is not an economically significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The changes described in this final rule will modernize the regulations governing HUD’s Housing Counseling Program to allow housing counseling agencies to use alternative communication methods, including virtual meeting tools, in lieu of providing in-person services. Participating agencies that do not provide in-person services will be required to refer clients to local providers that provide such services, when requested. The final rule will help reduce the costs of maintaining multiple physical locations, shifting the emphasis to demonstrating knowledge of the local housing market and community resources and whether a housing counseling agency has established a sufficient community base to operate in the area covered by its work plan. These revisions do not impose a significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the

Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control numbers 2502-0574 and 2502-0614.

List of Subjects in 24 CFR Part 214

Administrative practice and procedure; Grant programs—housing and community development; Loan programs—housing and community development; Organization and functions (government agencies); Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR part 214 as follows:

PART 214—HOUSING COUNSELING PROGRAM

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d).

■ 2. Revise § 214.103(l) to read as follows:

§ 214.103 Approval Criteria.

* * * * *

(l) *Facilities.* All participating agencies must maintain at least one facility. All facilities must meet the following criteria:

(1) Have a clearly identified space available for the provision of housing counseling services;

(2) Provide privacy for counseling services and confidentiality of client records; and

(3) Provide accessibility features or make alternative accommodations for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

■ 3. In § 214.300:

■ a. Revise paragraph (a)(3);

■ b. Redesignate paragraphs (a)(4) through (9) as paragraphs (5) through (10) respectively; and

■ c. Add new paragraph (a)(4).

The revision and addition read as follows:

§ 214.300 Counseling Services.

(a) * * *

(3) Counseling may take place at the housing counseling agency facility or at an alternate location, and may be conducted by telephone, or via collaborative online software. Agencies must ensure that any telephonic or collaborative online software, or any form of counseling, is accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR parts 8 and 9, and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). All agencies participating in HUD's Housing Counseling program must, upon a client's request, refer clients to participating agencies that provide in-person counseling services in accordance with § 214.303(e).

(4) Regardless of setting or format, all participating agencies must continue to meet the requirements of § 214.103(d), 214.103(g), and 214.103(h).

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2024–20946 Filed 9–13–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0852]

Safety Zones; Annual Events in the Captain of the Port Eastern Great Lakes Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Blazing Paddles Paddlefest 2024 marine event on September 15, 2024. Due to adverse heat conditions on June 22, 2024, the original event was cancelled and has been rescheduled for September 15, 2024. Additionally, the event course on the Cuyahoga River was altered to a reduced scale to accommodate the schedule change. The event course will be between the following positions: 41°29′54.2″ N 081°42′18.1″ W and 41°29′22.2″ N 081°40′52.2″ W. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or a designated representative.

DATES: The regulations listed in 33 CFR 165.939 Table 165.939, will be enforced for the following event during the date and time indicated below:

(a)(7) Blazing Paddles (Blazing Paddles Paddlefest 2024)—from 10:00 a.m. through 3:00 p.m. on September 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer Cody Mayrer at Marine Safety Unit Cleveland's Waterways Management Division; telephone 216–937–0111, email D09-SMB-MSUCLEVELAND-WWM@uscg.mil

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce this safety zone for the Blazing Paddles annual event in the Captain of the Port Eastern Great Lakes Zone listed in 33 CFR 165.939, Table 165.939. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within this safety zone during the enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Eastern Great Lakes via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal**

Register, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, the Broadcast Notice to Mariners will be cancelled. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: September 9, 2024.

J.B. Bybee,

Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.

[FR Doc. 2024–21008 Filed 9–13–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0481; FRL–11913–02–R5]

Air Plan Approval; Indiana; Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the monitoring and compliance requirements for certain process heater stacks at Safety-Kleen Oil Recovery Company in Lake County, Indiana (Safety-Kleen). EPA is also approving small language clarifications and equipment listing revisions for Safety-Kleen in the Indiana SIP for sulfur dioxide (SO₂). EPA proposed to approve this action on June 24, 2024, and received no adverse comments.

DATES: This final rule is effective on October 16, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2023–0481. 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.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta at (312) 353-8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background Information

On June 24, 2024 (89 FR 52413), EPA proposed to approve revisions to Title 326 of the Indiana Administrative Code (326 IAC), Article 7-4.1-16 (*Sulfur Dioxide Emission Limitations, Lake County Sulfur Dioxide Limitations, Safety-Kleen Oil Recovery Company sulfur dioxide emission limitations*) as contained in Indiana’s September 11, 2023, submittal and clarified through a March 11, 2024, letter to EPA. 326 IAC 7-4.1-16 was revised to codify provisions of an October 20, 2021, Agreed Order into the Indiana SIP. IDEM also revised 326 IAC 7-4.1-16 to reflect equipment changes at the facility in its title V operating permit. An explanation of the Clean Air Act (CAA) requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on July 24, 2024. EPA received no comments on the proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving into the Indiana SIP revisions to 326 IAC 7-4.1-16, effective August 11, 2023, as contained in Indiana’s September 11, 2023, submittal and clarified through a March 11, 2024, letter to EPA.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in section II of this preamble

and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov>, and at the EPA Region 5 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 SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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 Indiana Department of Environmental Management did not evaluate EJ 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 communities with EJ concerns.

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).

¹ 62 FR 27968 (May 22, 1997).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 9, 2024.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

EPA-APPROVED INDIANA REGULATIONS

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.*

■ 2. In § 52.770, the table in paragraph (c) is amended by revising the entry for “7–4.1–16” to read as follows:

§ 52.770 Identification of plan.

* * * * *
(c) * * *

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
7–4.1–16	Safety-Kleen Oil Recovery Company sulfur dioxide emission limitations.	8/11/2023	9/16/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	

* * * * *
[FR Doc. 2024–20856 Filed 9–13–24; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XE277]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category September Fishery for 2024

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for Atlantic bluefin tuna (BFT) for the remainder of the September time period. The General category may only retain, possess, or land large medium and giant (*i.e.*, measuring 73 inches (185 centimeters (cm) curved fork length (CFL) or greater) BFT when open. This action applies to Atlantic Tunas General category (commercial) permitted vessels and Atlantic highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the September time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of catch-and-release and tag-and-release programs. On October 1, 2024, the fishery will reopen automatically and previously scheduled RFDs for October will resume.

DATES: Effective 11:30 p.m., local time, September 12, 2024, through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, ann.williamson@noaa.gov, or Larry Redd, Jr., larry.redd@noaa.gov, 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.27(a) divides the U.S. BFT quota, established by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing

categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure action for that category until the opening of the relevant subsequent quota period or until such date as specified.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area per § 635.27(a)(3)). The General category baseline quota is 710.7 mt. The General category baseline quota is suballocated to time periods. Relevant to this action, the baseline subquota for the September time period is 188.3 mt.

Closure of the September 2024 BFT General Category Fishery

To date, reported landings for the BFT General category September time period total 98.5 mt. Based on these landings data, including average daily catch rates, as well as anticipated favorable fishing conditions in the coming days, NMFS has determined that the adjusted September time period subquota of 188.3 mt is projected to be reached and exceeded shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) CFL or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on September 12, 2024. The BFT General category will automatically reopen October 1, 2024, for the October through November time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1).

Waiver for Remaining September RFDs

On May 31, 2024 (89 FR 47095), NMFS published a final rule, which among other things, implemented RFDs every Sunday, Tuesday, Friday, and Saturday from July 1 through November 30, 2024. Since the fishery will be closed for the remainder of the September time period, NMFS has decided to waive the previously scheduled RFDs for the remainder of that time period. Previously scheduled RFDs (*i.e.*, every Sunday, Tuesday, Friday, and Saturday) will resume on October 1, 2024.

With the RFDs waived during a closure, consistent with § 635.23(a)(7), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs described at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required per § 635.5(a)(4) to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing <https://hmspermits.noaa.gov>, using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on October 1, depending on the level of fishing effort and catch rates of BFT at that time, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas as specified under § 635.27(a)(7). If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access <https://hmspermits.noaa.gov>, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635 and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on this action, for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and, based on the most recent landings information, the

available time period subquota is projected to be reached shortly. Delaying this action could result in BFT landings that exceed the September time period subquota, which may result in future potential quota reductions for other BFT categories, depending on the magnitude of a potential overharvest. Taking this action does not raise conservation and management concerns and would support effective management of the BFT fishery. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment and closure criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 11, 2024.

Karen H. Abrams,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2024–20994 Filed 9–11–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068; RTID 0648–XE270]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from American Fisheries Act (AFA) catcher/processor vessels to Amendment 80 vessels in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2024 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective September 11, 2024, through 2400 hours, Alaska local time (A.l.t.), December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI)

according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

TAC specified for AFA catcher/processor vessels in the BSAI is 3,201 metric tons (mt) as established by the final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024).

The 2024 Pacific cod TAC allocated to Amendment 80 vessels in the BSAI is 18,647 mt as established by final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that AFA catcher/processor vessels will not be able to harvest 1,500

mt of the AFA catcher/processor vessels 2024 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(7).

Therefore, in accordance with § 679.20(a)(7)(iii)(B), NMFS apportions 1,500 mt of Pacific cod from AFA catcher/processor vessels to Amendment 80 vessels.

The harvest specifications for 2024 Pacific cod included in final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024) are revised as follows: 1,701 mt to AFA catcher/processor vessels and 20,147 mt to Amendment 80 vessels.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment

would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from AFA catcher/processor vessels to Amendment 80 vessels. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 10, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: September 11, 2024.

Karen H. Abrams,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2024–20993 Filed 9–11–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 179

Monday, September 16, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2141; Project Identifier MCAI-2024-00421-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 supersede Airworthiness Directive (AD) 2022-11-01, which applies to certain Airbus SAS Model A300 series airplanes; Model A300 B4-600, B4-600R, and F4-600R series airplanes; and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes). AD 2022-11-01 requires a detailed inspection (DET) of the main landing gear (MLG) support rib 5 lower flange, a fluorescent penetrant inspection (FPI) around the spot facing of certain fastener holes if necessary, and applicable corrective actions. Since the FAA issued AD 2022-11-01, it was determined additional airplanes are affected. This proposed AD would continue to require the actions in AD 2022-11-01 and add airplanes to the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 31, 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-2024-2141; 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 identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2141.

- 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: Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3225; email: Dan.Rodina@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 the **ADDRESSES** section. Include “Docket No. FAA-2024-2141; Project Identifier MCAI-2024-00421-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 Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3225; email: Dan.Rodina@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

The FAA issued AD 2022-11-01, Amendment 39-22051 (87 FR 32292, May 31, 2022) (AD 2022-11-01), on certain Airbus SAS Model A300 and A300-600 series airplanes. AD 2022-11-01 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021-0190, dated August 17, 2021, to correct an unsafe condition.

AD 2022-11-01 requires a one-time DET of the MLG support rib 5 lower flange, inboard and outboard of rib 5, on the right-hand and left-hand sides (*i.e.*, affected area); a one-time FPI around the spot facing of certain fastener holes if necessary; and applicable corrective actions. The FAA issued AD 2022-11-01 to address cracking in the affected area. This condition, if not detected and

corrected, could affect the structural integrity of the airplane.

Actions Since AD 2022–11–01 Was Issued

Since the FAA issued AD 2022–11–01, EASA superseded AD 2021–0190, dated August 17, 2021, and issued EASA AD 2024–0145, dated July 23, 2024 (EASA AD 2024–0145) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A300, A300–600, and A300–600ST series airplanes. Model A300–600ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states that certain airplanes were excluded from the applicability of EASA AD 2021–0190 on the assumption they were withdrawn from service. Since issuance of that EASA AD, it was determined at least one of those airplanes is in service and the DET and FPI were accomplished on that airplane. Further, there is no evidence that the other excluded airplanes were scrapped or dismantled so the possibility exists they could also return to service. For these reasons, the applicability was expanded to include those airplanes.

Also, since the FAA issued AD 2022–11–01, FAA Type Certificate A35EU was updated to remove Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes. The FAA therefore is proposing to remove those airplanes from the applicability of this proposed AD.

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–2024–2141.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024–0145 specifies procedures for a one-time DET of the affected area, a one-time FPI around the spot facing of certain fastener holes in the affected area if no crack is detected during the DET, and obtaining and following approved repair instructions if any crack is found during the DET or FPI. EASA AD 2024–0145 also updated the applicability of affected airplanes.

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

FAA’s Determination

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 2024–0145 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 2024–0145 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0145 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 2024–0145 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 2024–0145. Material required by EASA AD 2024–0145 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2141 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, adopted as proposed, would affect 124 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
23 work-hours × \$85 per hour = \$1,955	\$0	\$1,955	\$242,420

The FAA estimates the following costs to replace any cracked rib that would be required based on the results

of any required actions and repair status. The FAA has no way of

determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 1,500 work-hours × \$85 per hour = \$127,500	\$620,000	Up to \$747,500.

The FAA has received no definitive data on which to base the cost estimates for the repair specified in this AD.

Authority for This Rulemaking
Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2022–11–01, Amendment 39–22051 (87 FR 32292, May 31, 2022); and
 - b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–2141; Project Identifier MCAI–2024–00421–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 31, 2024.

(b) Affected ADs

This AD replaces AD 2022–11–01, Amendment 39–22051 (87 FR 32292, May 31, 2022).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2024–0145, dated July 23, 2024 (EASA AD 2024–0145).

- (1) Model A300 B4–2C, B4–103, and B4–203 airplanes.
- (2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.
- (3) Model A300 B4–605R and B4–622R airplanes.
- (4) Model A300 C4–605R Variant F airplanes.
- (5) Model A300 F4–605R and F4–622R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracking in the main landing gear (MLG) support rib 5 lower flange, inboard and outboard of rib 5, on the right-hand and left-hand sides. The FAA is issuing this AD to address cracking of the MLG support rib 5 lower flange. This condition, if not detected and corrected, could affect the structural integrity of the airplane.

(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, EASA AD 2024–0145.

(h) Exceptions to EASA AD 2024–0145

(1) Where EASA AD 2024–0145 refers to August 31, 2021 (the effective date of EASA AD 2021–0190), this AD requires using July 5, 2022 (the effective date of AD 2022–11–01, Amendment 39–22051 (87 FR 32292, May 31, 2022)).

(2) Where EASA AD 2024–0145 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (3) of EASA AD 2024–0145 specifies to “accomplish those instructions accordingly” if any crack is detected, for this AD if any crack is detected, the crack 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.

(4) This AD does not adopt the “Remarks” section of EASA AD 2024–0145.

(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, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) Airbus Statement of Airworthiness Compliance (ASAC) 80955386/006/2021, Issue 1, dated August 25, 2021; and ASAC 80955386/024/2022, Issue 1, dated February 25, 2022, are approved as AMOCs for the corresponding provisions of this AD for the airplanes identified in those ASACs only.

(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 2024–0145 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 Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3225; email: Dan.Rodina@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2024–0145, dated July 23, 2024.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3,

50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 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 September 10, 2024.

Peter A. White,

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

[FR Doc. 2024-20817 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2024-2104; Airspace Docket No. 23-ANM-38]

RIN 2120-AA66

Establishment of Class E Airspace; Austin Airport, Austin, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Austin Airport, Austin, NV. The airport is transitioning from visual flight rules (VFR) to instrument flight rules (IFR), and these actions would support the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before October 31, 2024.

ADDRESSES: Send comments identified by FAA Docket No. [FAA-2024-2104] and Airspace Docket No. [23-ANM-38] using any of the following methods:

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

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

* *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FAA Order JO 7400.11J, 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:

Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-3460.

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 establish Class E airspace to support IFR operations at Austin Airport, Austin, NV.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any

recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 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 proposes to amend the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024 and effective September 15, 2024. These

updates would 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 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The airspace proposed within this action would lie within and under the Fallon South 4 Military Operations Area, which is non-regulatory special use airspace. Additionally, VFR Military Training Route (VR)–208 transitions through the proposed Class E airspace from point “F” to point “G,” between the altitudes of 200 feet above ground level and 12,000 feet mean sea level, 10 miles on either side of the centerline.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface at Austin Airport, Austin, NV.

The proposed airspace is centered on the Austin Airport Reference Point and includes that airspace within a 3.5-mile radius, as well as three extensions due to rising terrain to the north and southwest of the airport. The Class E airspace should include an expanded radius and extension to the north to contain departing IFR aircraft until reaching 1,200 feet above the surface and arriving IFR aircraft less than 1,500 feet above the surface. It should also be extended to the southwest to contain departing IFR aircraft until reaching 1,200 feet above the surface.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

- 1. The authority citation for 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 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

ANM NV E5 Austin, NV [New]

Austin Airport, NV
(Lat. 39°28′05″ N, long. 117°11′51″ W)

That airspace extending upwards from 700 feet above the surface within a 3.5-mile radius of the airport, within 1.1 miles west and 1.6 miles east of the airport’s 021° bearing extending to 8.2 miles north of the airport, within 2.2 miles on either side of the airport’s 203° bearing extending to 7.9 miles southwest of the airport, and within the airport’s 317° bearing clockwise to the 012° bearing extending from the airport’s 3.5-mile radius to its 6.3-mile radius.

* * * * *

Issued in Des Moines, Washington, on September 9, 2024.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2024–20918 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–GLCA–NPS0038209
PPIMGLCAA0.PPMPAS1Z.Y00000–
244P10361]

RIN 1024–AE91

Glen Canyon National Recreation Area; Motor Vehicles

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend special regulations for the Glen Canyon National Recreation Area to update rules about the use of motor vehicles on roads and off roads on designated routes and areas.

DATES: Comments must be received by November 15, 2024. *Information Collection Requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to decide on the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by November 15, 2024.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AE91, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov/>. Follow the instructions for submitting comments.

(2) *By hard copy:* Mail to: Superintendent, Glen Canyon National Recreation Area, P.O. Box 1507, Page, Arizona 86040.

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024–AE91) for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others. The scope of this rule is limited to the specific changes to existing regulations proposed in this document. The NPS will not consider comments that address aspects of existing regulations that would not be changed by this proposed rule.

Docket: For access to the docket to read comments received, go to <https://www.regulations.gov/> and search for “1024–AE91.”

Information Collection Requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244), Herndon, VA 20171 (mail); or phadrea_ponds@nps.gov (email). Please include “1024–AE91” in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Michelle Kerns, Superintendent, Glen Canyon National Recreation Area, P.O. Box 1507, Page, Arizona 86040, by phone at 928–608–6210, or by email at GLCA_Superintendent@nps.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. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on [Regulations.gov](https://www.regulations.gov) in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Significance of Glen Canyon National Recreation Area

Congress established Glen Canyon National Recreation Area (the recreation area) in 1972 “to provide for the public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the states of Arizona and Utah and to preserve the scenic, scientific, and historic features contributing to the public enjoyment of the area.” 16 U.S.C. 460dd.

The recreation area encompasses 1,254,117 acres in northern Arizona and southeastern Utah and constitutes a substantial part of the outstanding public lands of the Colorado Plateau. The recreation area offers a natural diversity of rugged water- and wind-carved canyons, buttes, mesas, and

other outstanding physiographic features. The recreation area allows for a variety of recreational opportunities, including on- and off-road motor vehicle use and contains Lake Powell, the second-largest human-made lake in North America, which provides the opportunity to recreate in a natural environment and access remote backcountry areas. Evidence of 11,000 years of human occupation and use of resources in the recreation area provides a continuing story of the prehistoric, historic, and present-day affiliation of humans and their environment.

Authority To Promulgate Regulations

The National Park Service (NPS) manages the recreation area under the NPS Organic Act (54 U.S.C. 100101 *et seq.*), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through the NPS, to “prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.” 54 U.S.C. 100751(a). In the recreation area’s enabling act, Congress directed the Secretary of the Interior to “administer, protect, and develop the recreation area in accordance with the [Organic Act], and with any other statutory authority available to him for the conservation and management of natural resources.” 16 U.S.C. 460dd–3. These general authorities allow the NPS to regulate the use of motor vehicles within the recreation area, both on roads and off roads in designated routes and areas.

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 and amended by Executive Order 11989 in 1977. Executive Order 11644 required Federal agencies to issue regulations designating specific areas and routes on public lands where the use of off-road vehicles (ORVs) may be allowed. The NPS implemented these Executive Orders, in part, by promulgating a regulation at 36 CFR 4.10 (Travel on park roads and designated routes). Under 36 CFR 4.10, the use of motor vehicles off established roads is not permitted unless routes and areas are designated for off-road motor vehicle use by special regulation. Under 36 CFR 4.10(b), such routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves. This proposed rule would implement regulatory changes for certain areas where motor vehicles may be used off roads in the recreation area in compliance with 36 CFR 4.10 and Executive Orders 11644 and 11989. The

proposed changes to motor vehicle use on roads within the recreation area are not subject to the requirements in 36 CFR 4.10(b) and the Executive Orders. Paved and unpaved roads within the recreation area are referred to in this rule and defined in the regulations as “GMP roads” because they are identified in the recreation area’s 1979 General Management Plan as open to motor vehicle traffic. There are no roads within the recreation area other than GMP roads.

Current Motor Vehicle Use in the Recreation Area

In 2021, the NPS promulgated special regulations addressing the use of motor vehicles within the recreation area (86 FR 3804). These regulations are codified at 36 CFR 7.70(f) and address the use of conventional motor vehicles, off-highway vehicles (OHVs), and street-legal all-terrain vehicles (ATVs). The regulations establish rules for the use of motor vehicles on paved and unpaved GMP roads and off roads in designated areas and routes. The regulations also contain a permit requirement for off-road motor vehicle use, motor vehicle and operator requirements, and provide the superintendent with a specific discretionary authority to establish closures, conditions, and restrictions on off-road motor vehicle use after taking into consideration public health and safety, natural and cultural resource protection, lake levels, and other management activities and objectives.

Litigation and Settlement Agreement

National Parks Conservation Association filed a Complaint challenging the special regulations on January 19, 2021, which they subsequently amended on April 16, 2021. More than two years later, Southern Utah Wilderness Alliance filed a Complaint on March 15, 2023, which it subsequently amended on August 7, 2023. The Court consolidated the two matters and stayed the cases for settlement discussions among the parties. The Parties executed a Settlement Agreement on March 26, 2024. The court subsequently entered an Order dismissing the cases on April 10, 2024. As part of the Settlement, the NPS agreed to propose revisions to the existing special regulations.

Proposed Rule

This rule would make the following changes to the existing special regulations in 36 CFR 7.70(f).

Two changes would address OHV and street-legal ATV use in the Orange Cliffs Special Management Unit, defined in the existing regulations as the area

identified as the Orange Cliffs Special Management Unit in the Canyonlands National Park and Orange Cliffs Unit of Glen Canyon National Recreation Area Backcountry Management Plan (NPS 1995). The rule would prohibit the use of OHVs and street-legal ATVs on an 8-mile segment of the Poison Spring Loop located on Route 633 proceeding north to Route 730 in the Orange Cliffs Special Management Unit, identified in Table 2 to paragraph (f)(4)(i) in the existing special regulations. The rule would also eliminate the superintendent's authority to potentially allow OHVs and street-legal ATVs on the upper portion of the Flint Trail in the Orange Cliffs Special Management Unit, identified in Table 2 to paragraph (f)(4)(i) in the existing special regulations.

Three other changes would address off-road vehicle use in areas that allow for access from GMP roads to the shoreline of the lake, referred to as shoreline access areas.

One change would affect the following 10 shoreline access areas that are identified in table 1 to paragraph (f)(3)(ii) of the existing special regulations: Lone Rock Beach, Blue Notch, Bullfrog North and South, Crosby Canyon, Dirty Devil, Farley Canyon, Hite Boat Ramp, Red Canyon, Stanton Creek, White Canyon. The rule would separate the existing shoreline access area at Bullfrog North and South into two shoreline access areas, one for Bullfrog North and another for Bullfrog South. The rule would require the superintendent to identify lake elevation levels at each of the 11 shoreline access areas where, if the lake elevation drops below the identified level and remains below the identified level for seven consecutive days, the shoreline access area would close to off-road motor vehicle use. Inversely, if the lake elevation increases above the identified level and remains above the identified level for seven consecutive days, the shoreline access area would open to off-road vehicle use.

The rule would require the superintendent to use hydrologic data from the United States Geological Survey and the Bureau of Reclamation to set the lake elevation levels, which would be subject to change based upon public health and safety, natural and cultural resource protection, and other management activities and objectives. The rule would require the elevation levels to be published on the recreation area's website and listed in the superintendent's compendium for the recreation area. The superintendent's compendium is a written compilation of all the designations, closures, permit requirements and other restrictions

imposed under discretionary authority, required by 36 CFR 1.7(b). After the lake elevation drops below or rises above the identified level, and the seven-day waiting period has concluded, the rule would require the superintendent to identify the shoreline access area as open or closed to off-road vehicle use on the website for the recreation area and in the superintendent's compendium within 14 days after the expiration of the seven-day waiting period. The rule would require the NPS to install signs at each shoreline access area notifying the public that it is opened or closed to off-road motor vehicle use. When a shoreline access area is closed because lake elevations have dropped, the rule also would require the NPS to consider additional steps to prevent off-road vehicle use in the area, such as the installation of gates. The rule would clarify that motor vehicle use on a GMP road may continue within a closed shoreline access area at the discretion of the superintendent, and subject to the rules for operating a motor vehicle on such roads in the special regulations.

A second change related to shoreline access areas would add a statement in the regulations that off-road vehicle use in any of those areas, including the shoreline access areas identified in table 1 to paragraph (f)(3)(ii) of the existing special regulations that are not subject to closure based upon lake elevation, must be for the purpose of traveling from a GMP road to the shoreline, and back. This would draw a clear distinction between the purpose of off-road vehicle use in shoreline access areas and the purpose of off-road vehicle use in Lone Rock Beach, Lone Rock Beach Play Area, and Ferry Swale, which are identified in table 1 to paragraph (f)(3)(ii), but not considered shoreline access areas. Lone Rock Beach is a developed area with a year-round campground and visitor activities associated with that use. Lone Rock Beach Play Area is a fenced location open to dispersed, high-intensity ORV use. Ferry Swale is a network of approximately 21 miles of off-road vehicle routes that does not provide access to the lake.

The existing regulations in paragraph (f)(6)(i) require the superintendent to provide public notice of closures, conditions or restrictions on ORV use through one or more of the methods listed in 36 CFR 1.7. A third change affecting shoreline access areas would require the superintendent, in every case, to publish notice of all such actions on the recreation area's website.

The revised rule would also prohibit OHV and street-legal ATV use on the following unpaved GMP roads in the

Recreation & Resource Utilization Zone that is defined in the 1979 General Management Plan for the recreation area:

- Unnamed road near Dry Mesa/ Sheep's Canyon near Hite, sometimes referred to as Dry Mesa Road (approximately 4.31 miles).
- Road #2/95 Spur near Hite, also known as Dirty Devil Spur (approximately 1.14 miles).
- Cove Canyon Spur Road near Hite (approximately 0.65 miles).
- Flint Trail Spur Road near Hite, also known as Waterhole Flat Spur #1 Road & Dark Canyon Overlook Road (approximately 0.72 miles).
- Ticaboo Mesa Road near Bullfrog (approximately 1.45 miles).
- Muley Point Road (approximately 1.26 miles).
- Johns Canyon Road near Muley Point (approximately 7.49 miles).

NPS would also change the quiet hours in the Lone Rock Beach Play Area from 10 p.m. to 6 a.m., in the existing regulations, to sunset to sunrise in the proposed rule. The superintendent retains the authority to lengthen the quiet hour time-period.

This rule would also replace a reference in paragraph (f)(2)(ii) of § 7.70 of the existing regulations to a "special use permit" with a general reference to a "permit," in order to provide the NPS with the flexibility to use, upon further analysis, other types of permits to authorize off-road vehicle use, such as special recreation permits under the Federal Lands Recreation Enhancement Act. 16 U.S.C. 6802(h).

Finally, the rule would remove two sentences in paragraphs (f)(2)(i) and (f)(3)(ii) stating that certain regulations are effective beginning on May 17, 2021. This date has passed and therefore these statements are obsolete and unnecessary.

Compliance With Other Laws, Executive Orders, and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Orders 11644 and 11989)

Executive Order 11644, as amended by Executive Order 11989, was adopted to address impacts on public lands from ORV use. The Executive Order applies to ORV use on Federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(a)(4) of Executive Order 11644 provides that ORV "[a]reas and trails shall be located in areas of the National Park System, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines

that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.” Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term “adversely affect” does not have the same meaning as the somewhat similar terms “adverse impact” and “adverse effect” used in the National Environmental Policy Act of 1969 (NEPA). In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term “adverse effect” includes minor or negligible effects.

Section 3(a)(4) of the Executive Order, by contrast, concerns substantive management decisions and must be read in the context of the authorities applicable to such decisions. Glen Canyon National Recreation Area is an area of the National Park System. Therefore, NPS interprets the Executive Order term “adversely affect” consistent with its NPS Management Policies 2006. Those policies require that the NPS only allow “appropriate use” of parks and avoid “unacceptable impacts.”

This rule is consistent with the requirements of Executive Order 11644. Substantive analysis supporting this determination includes, but is not limited to, the January 2017 Off-Road Vehicle Management Plan/Final Environmental Impact Statement (FEIS), and the pending revised Record of Decision and Non-Impairment Determination for this rulemaking.

Section 8(a) of the Executive Order requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of information gathered, agency heads may from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the Executive Order. The preferred alternative in the FEIS that was selected in the related 2017 Record of Decision includes monitoring and resource protection procedures and periodic review to provide for the ongoing evaluation of impacts of motor vehicle use on protected resources. This ongoing adaptive management and monitoring protocol would continue under the proposed rule. The superintendent retains authority to take appropriate action as needed to protect the resources of the recreation area.

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all

significant rules. OIRA has determined that the final rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

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. Executive Order 13563 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. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This proposed rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). No small entities would be directly regulated by the proposed rule, which would only modify regulations affecting visitor use of ORVs in certain areas of the park. The roads that would be closed to OHV and street-legal ATV use only account for 25 of 388 miles (or approximately six percent) of GMP roads open to motor vehicle use in the recreation area. Currently, there are no authorized guiding companies that use OHVs and street-legal ATVs on the roads that would be closed to those vehicles.

Congressional Review Act

This rulemaking is not a major rule under 5 U.S.C. 804(2). This rulemaking:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (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) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rulemaking does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rulemaking does not have a significant or unique effect on State, local or Tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking only affects use of federally administered lands and waters. It has no direct effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rulemaking complies with the requirements of Executive Order 12988. This rulemaking:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We

have evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's consultation policy and have determined that Tribal consultation on the proposed rule is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes. In support of the Department of Interior and NPS commitment for government-to-government consultation with the 19 Native American Tribes and bands associated with the recreation area, and as a reflection of the shared boundary of the recreation area and the Navajo Nation, the NPS has engaged in a continuing process of consultation with these Tribes and bands. This consultation has taken the form of bimonthly newsletters, in-person meetings with chapter houses, informal email updates, and formal update letters.

Paperwork Reduction Act (PRA)

This proposed rule contains no new information requirements that will affect the currently approved information collection. (NPS Special Park Use Permits NPS Form 10-933—OMB Control Number 1024-0026). By using NPS Form 10-933 this action will cause a net increase of 3,000 respondents and 750 burden hours. In accordance with 5 CFR 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB). Based on the anticipated net increase, we expect that the overall respondent burden for this collection will be 83,542 responses totaling 23,640 annual burden hours.

Title of Collection: Special Park Use Applications, portions of 36 CFR 1-7, 13, 20, and 34.

OMB Control Number: 1024-0026.

Form Number: NPS Forms 10-930, 10-930c, 10-930s, 10-930q, 10-931, 10-932, 10-933, 10-934.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households (licensed anglers drawn from three representative U.S. States).

Total Estimated Number of Annual Respondents: 83,542.

Total Estimated Number of Annual Responses: 83,542.

Estimated Completion Time per Response: Varies from 15 minutes to 30 minutes.

Total Estimated Number of Annual Burden Hours: 23,640.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.
Total Estimated Annual Nonhour Burden Cost: \$6,265,650 for application fees.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

This rule constitutes a major Federal action significantly affecting the quality of the human environment. We have prepared a FEIS under NEPA. The FEIS is available online at <http://parkplanning.nps.gov/glca-orvplan>, and then clicking on the link entitled "Document List". Upon or before publication of the final rule, the NPS will publish a revised Record of Decision for the FEIS on the recreation area planning website identified above.

Effects on the Energy Supply (Executive Order 13211)

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

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the proposed rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

- 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

- 2. Amend § 7.70 by:
 - a. Removing and reserving paragraph (f)(2)(i);
 - b. In paragraph (f)(2)(ii), removing the words "special use";
 - c. In paragraph (f)(3)(ii), removing the last sentence;
 - d. In table 1 to paragraph (f)(3)(ii):
 - i. Adding, at the top of the table, entries for "Bullfrog North" and "Bullfrog South";
 - ii. Revising the entry for "Lone Rock Beach Play Area"; and
 - iii. Removing the entry for "Bullfrog North and South";
 - e. Adding paragraphs (f)(3)(iii) and (iv);
 - f. Revising table 2 to paragraph (f)(4)(i); and
 - g. Revising paragraphs (f)(4)(ii) and paragraph (f)(6)(ii).

The revisions and additions read as follows:

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*      *      *      *      *
(f) * * *
(3) * * *
(ii) * * *
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TABLE 1 TO PARAGRAPH (f)(3)(ii)

Designated area or route for off-road motor vehicle use	Approximate size (acres)	Management prescriptions
Bullfrog North	860	• Street-legal ATVs allowed with ORV permit from March 2–October 31. • Conventional motor vehicles allowed with ORV permit year-round. • 15 mph speed limit (unless otherwise posted). • Quiet hours between 10 p.m. and 6 a.m. or as designated by superintendent. • Vehicle-free zone as posted.
Bullfrog South	1,410	• Street-legal ATVs allowed with ORV permit from March 2–October 31. • Conventional motor vehicles allowed with ORV permit year-round. • 15 mph speed limit (unless otherwise posted). • Quiet hours between 10 p.m. and 6 a.m. or as designated by superintendent. • Vehicle-free zone as posted.
* * *		
Lone Rock Beach Play Area	180	• Conventional motor vehicles, street-legal ATVs, and OHVs allowed with ORV permit. • OHVs required to display a red or orange safety flag at least six by 12 inches in size that is located at least eight feet off the ground, or at least 18 inches above the top of the protective headgear of a motorcycle or dirt bike operator. • Quiet hours between sunset and sunrise or as lengthened by the superintendent.
* * *		

(iii) Certain areas designated in table 1 to paragraph (f)(3)(ii) will close and open to off-road motor vehicle use pursuant to the provisions in this paragraph (f)(3)(iii).

(A) The superintendent will identify lake elevation levels for each of the following areas designated in table 1 to paragraph (f)(3)(ii): Lone Rock Beach, Blue Notch, Bullfrog North, Bullfrog South, Crosby Canyon, Dirty Devil, Farley Canyon, Hite Boat Ramp, Red Canyon, Stanton Creek, and White Canyon.

(B) The superintendent will use hydrologic data from the United States Geological Survey and the Bureau of Reclamation to identify the lake elevation levels, which would be subject to change based upon public health and safety, natural and cultural resource protection, and other management activities and objectives. The superintendent will notify the public of the lake elevation levels by publishing them on the website of the recreation

area and in the superintendent's compendium (or written compilation) of discretionary actions referred to in 36 CFR 1.7(b).

(C) If the lake elevation drops below the identified level for a designated area and remains below the identified level for seven consecutive days, the superintendent will close the designated area to off-road motor vehicle use. If the lake elevation increases above the identified level for a designated area and remains above the identified level for seven consecutive days, the superintendent will open the designated area to off-road motor vehicle use. The superintendent will notify the public that a designated area has been closed or opened to off-road motor vehicle use within 14 days after the expiration of the seven-day waiting period, by publishing a notice of the management action on the website of the recreation area and in the superintendent's compendium.

(D) The National Park Service will install signs at each designated area notifying the public that it is opened or closed to off-road motor vehicle use. When a designated area is closed because lake elevations have dropped, the superintendent will consider additional steps to prevent off-road motor vehicle use in the area, such as the installation of gates. Motor vehicle use on a GMP road may continue within a closed designated area at the discretion of the superintendent, and subject to the rules for operating a motor vehicle on such roads in this paragraph (f) to § 7.70.

(iv) Off-road motor vehicle use in any of the areas designated in Table 1 to Paragraph (f)(3)(ii), except for Lone Rock Beach, Lone Rock Beach Play Area and Ferry Swale, must be for the purpose of traveling from a GMP road to the shoreline, and back.

(4) * * *

(i) * * *

TABLE 2 TO PARAGRAPH (f)(4)(i)

Type of motor vehicle	Allowed on paved GMP roads	Allowed on unpaved GMP roads outside the Orange Cliffs Special Management Unit	Allowed on unpaved GMP roads within the Orange Cliffs Special Management Unit
Conventional motor vehicle	Yes	Yes	Yes.
Street-legal ATV	Yes (except for the Lees Ferry Developed Area).	Yes (except for the GMP roads identified in paragraph (f)(4)(ii)).	No.
OHV	No	Yes (except for the GMP roads identified in paragraph (f)(4)(ii)).	No.

(ii) Street-legal ATVs and OHVs are not allowed on the following unpaved GMP roads identified in the Recreation & Resource Utilization Zone, as defined

in the 1979 General Management Plan for the recreation area:

(A) Unnamed road near Dry Mesa/ Sheep's Canyon near Hite, sometimes

referred to as Dry Mesa Road (approximately 4.31 miles).

(B) Road #2/95 Spur near Hite, also known as Dirty Devil Spur (approximately 1.14 miles).

(C) Cove Canyon Spur Road near Hite (approximately 0.65 miles).

(D) Flint Trail Spur Road near Hite, also known as Waterhole Flat Spur #1 Road and Dark Canyon Overlook Road (approximately 0.72 miles).

(E) Ticaboo Mesa Road near Bullfrog (approximately 1.45 miles).

(F) Muley Point Road (approximately 1.26 miles).

(G) Johns Canyon Road near Muley Point (approximately 7.49 miles).

* * * * *

(6) * * *

(i) * * *

(ii) The superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter, and through publication on the recreation area website.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–21032 Filed 9–13–24; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2024–0186; FRL–12250–01–R4]

Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), via a letter dated February 28, 2024. Specifically, EPA is proposing to approve updates to the incorporation by reference of Federal prevention of significant deterioration (PSD) rules in the Mississippi SIP. EPA is also proposing to convert the previous conditional approval of Mississippi's infrastructure SIP PSD and air quality modeling provisions for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) to a full approval. EPA is also proposing changes to public notice

provisions for PSD permitting to provide for electronic notice (e-notice) and to remove the mandatory requirement to provide public notice in a newspaper, and other minor changes to the PSD rules. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before October 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2024–0186 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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:

Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

Mississippi's February 28, 2024, SIP submission seeks to revise the State's new source review (NSR) permitting regulations at 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment* (Chapter 2) and PSD permitting regulations at 11 MAC, Part 2, Chapter 5, *Regulations for the Prevention of Significant Deterioration of Air Quality* (Chapter 5) to adopt relevant Federal permitting regulations into the SIP. The PSD permitting

changes at Chapter 5, amend MDEQ's incorporate by reference (IBR) date of the Federal PSD regulations at 40 CFR 51.166(f) and 40 CFR 52.21 to December 27, 2023. Mississippi's December 27, 2023, IBR date adopts into the SIP at Chapter 5, changes to 40 CFR 52.21 that EPA promulgated in several rulemakings since the Mississippi's last IBR update of February 17, 2016. The changes at Chapter 2 amend NSR general permitting requirements. EPA is also proposing to convert EPA's March 1, 2023, conditional approval of PSD and air quality modeling provisions at section 110(a)(2)(C), (D)(i)(II) (prong 3), (J), and (K), for Mississippi's infrastructure SIP for the 2015 ozone NAAQS to a full approval based on the revisions to Chapter 2 and Chapter 5. Lastly, the February 28, 2024, SIP submission proposes to revise the SIP-approved PSD regulations at Chapter 5 to adopt public participation revisions consistent with EPA's October 5, 2016, rule “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs” Final Rule.¹

EPA's proposed rule briefly summarizes the framework of the PSD permitting program, how the program is implemented in Mississippi, and what Federal changes MDEQ is requesting EPA to IBR into its SIP. EPA is proposing to approve Mississippi's February 28, 2024, PSD revisions to Chapters 2 and 5 because they are consistent with EPA's Federal PSD permitting regulations and the CAA. EPA summarizes the PSD rule revisions in sections II.B and II.C of this document. Please refer to the referenced **Federal Register** citations for additional detailed background on the Federal PSD regulations at 40 CFR 52.21.

II. Background

A. Mississippi's 2015 Ozone NAAQS Infrastructure SIP Submissions

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, States are required to submit SIP revisions meeting 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. Section 110(a)(2) requires States to address basic SIP

¹ *See* 81 FR 71613. The February 28, 2024, SIP submission also updates 11 MAC, Part 2, Chapter 2 to address NSR requirements that will be addressed in a separate rulemaking.

elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.²

Mississippi submitted two SIP submissions on September 6, 2019, and January 25, 2021, to address their 110(a)(1) and (2) infrastructure obligations for the 2015 ozone standard.³ Through previous rulemakings, EPA approved most of the iSIP elements for the 2015 ozone NAAQS.⁴

On December 23, 2022, EPA proposed to conditionally approve⁵ changes to portions of Mississippi’s 2015 8-hour ozone NAAQS iSIP contained in MDEQ’s original January 25, 2021, infrastructure submittal as supplemented on November 18, 2022.^{6,7} Specifically, EPA proposed conditional approval of the PSD elements of CAA section 110(a)(2)(C), (D)(i)(II) (prong 3) and (J), and the modeling requirements of section 110(a)(2)(K) because

² In infrastructure SIP submissions, States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of State regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

³ Mississippi submitted their interstate transport SIP on September 6, 2019, to address the State’s section 110(a)(2)(D)(i)(I) prongs 1 and 2 interstate transport obligations respecting contribution to nonattainment or interference with maintenance, respectively, in other States. EPA took final action on this submission on February 13, 2023, (88 FR 9336). On January 25, 2021, Mississippi submitted a second SIP revision to EPA to address all required infrastructure elements except for the interstate transport provisions of section 110(a)(2)(D)(i)(I) prongs 1 and 2.

⁴ See 87 FR 57832 (September 22, 2022), and 88 FR 9336 (February 13, 2023).

⁵ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the State fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁶ Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 87 FR 78896 (December 23, 2022).

⁷ Mississippi supplemented its January 25, 2021, infrastructure SIP with a November 18, 2022, commitment letter to EPA to update outdated references to the Federal guideline on air quality modeling found in Appendix W of 40 CFR part 51. See Docket ID EPA–R04–OAR–2024–0186 for a copy of the commitment letter.

Mississippi’s SIP-approved PSD regulations did not, at the time, reference the most updated version of EPA’s *Guideline of Air Quality Models*, codified at 40 CFR part 51, Appendix W. On March 1, 2023, EPA finalized the conditional approval for the PSD infrastructure elements (*i.e.*, section 110(a)(2)(C), (D)(i)(II) (prong 3) and (J)), and the air quality modeling element of section 110(a)(2)(K), portion of the January 25, 2021, infrastructure SIP submission, as supplemented on November 18, 2022.⁸

The March 1, 2023, conditional approval of the PSD and air quality modeling iSIP provisions established a requirement for Mississippi to submit a final SIP submission that addresses the terms of the conditional approval commitment one year after EPA’s conditional approval of these portions of Mississippi’s ozone iSIP or March 1, 2024. Accordingly, on February 28, 2024, Mississippi submitted a final SIP revision in response to the conditional approval commitment to address the outdated references to the Federal guideline on air quality modeling, by revising Chapter 2 and Chapter 5 to require the use of the current version of 40 CFR part 51, Appendix W (*Guideline on Air Quality Models*).

B. PSD Public Participation Revisions and Increment Consumption IBR Update

Mississippi’s February 28, 2024, SIP submission proposes to revise the SIP-approved PSD regulations at Chapter 5 to adopt public participation revisions consistent with EPA’s October 5, 2016, rule “Revisions to Public Notice Provisions in Clean Air Act Permitting Programs.”⁹ This 2016 rule revised EPA’s public notice provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA to remove the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for electronic notice (e-notice) as an option for permitting authorities. Permitting authorities are not required to adopt e-notice, and nothing in the revised Federal rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For the noticing of draft permits issued by permitting authorities

⁸ Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 88 FR 12833 (March 1, 2023).

⁹ See 81 FR 71613.

with EPA-approved programs, the rule requires the permitting authority to use “a consistent noticing method” for all permit notices under the specific permitting program. When e-notice is provided, EPA’s rule requires electronic access (e-access) to the draft permit for the duration of the public comment period which would enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and provide cost savings over newspaper publication. A full description of the e-notice and e-access provisions is contained in EPA’s October 18, 2016, rulemaking notice. See 81 FR 71613. The 2024 submission revises the public participation provisions by deleting an incorporated reference to the public notice provisions at 40 CFR 51.166(q) in Rule 5.4 and adding public participation requirements to new Rule 5.7. Rule 5.4 is also revised to include an IBR date of December 23, 2024, for 40 CFR 51.166(f)—*Exclusions from Increment Consumption*, which does not substantively change these incorporated provisions.

C. Mississippi’s February 28, 2024, SIP Submission Chapter 5 PSD Incorporate by Reference Update for 40 CFR 52.21

Mississippi’s 2024 SIP submission proposes updates to the IBR of the 40 CFR 52.21 Federal PSD permitting rules in the Mississippi SIP at Chapter 5 from February 17, 2016, to December 27, 2023. Mississippi’s Rule 5.2 IBR date revision incorporates the following Federal PSD regulation amendments at 40 CFR 52.21 that EPA promulgated from 2016 through 2021:¹⁰ “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector” 81 FR 35622 (June 3, 2016); “Rescission of Preconstruction Permits Issued under the Clean Air Act” 81 FR 78043 (November 7, 2016); “Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter” 82 FR 5182 (January 17, 2017); “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting” 85 FR 74890 (November 24, 2020); and “New Source Review Errors Correction” 86 FR 37918 (July 19, 2021). EPA summarizes these PSD rule revisions below. Please refer to the referenced **Federal Register** citations for additional

¹⁰ See Mississippi’s February 28, 2024, SIP revision in the docket for this rulemaking (Docket ID: EPA–R04–OAR–2024–0186).

detailed background on the Federal PSD regulations at 40 CFR 52.21.

i. Oil and Natural Gas Source Determinations PSD Revisions

On June 3, 2016, EPA finalized the rule entitled “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector”¹¹ to clarify the agency’s air permitting rules as they apply to the oil and natural gas industry. The final rule clarifies when oil and gas equipment and activities must be deemed a single source when determining whether major source permitting programs apply, including PSD and Nonattainment New Source Review preconstruction permitting programs, and the Title V Operating permits program. By defining the term “adjacent,” the rule specifies that equipment and activities in the oil and gas sector that are under common control will be considered part of the same source if they are located near each other—specifically if they are located on the same site or on sites that share equipment and are within ¼ mile of each other. EPA previously addressed this definition through policy interpretation and guidance. The final rule applies to equipment and activities used for onshore oil and natural gas production, and for natural gas processing. It does not apply to offshore operations. The meaning of adjacency for onshore activities is addressed in the definition of “building, structure, facility, or installation” found in 40 CFR 52.21(b)(6) and incorporated into 11 Miss. Admin. Code Pt. 2, Ch. 5 via the revised IBR date of December 27, 2023.

ii. PSD Permit Rescission Revisions

On November 7, 2016, EPA finalized amendments to the Federal PSD rules at 40 CFR 52.21(w) to remove a date restriction that limited the use of the permit rescission provision, a provision that allows a PSD permit to be cancelled, and clarified implementing provisions.¹² Before this revision, only permits based on rules issued on or before July 30, 1987, and any PSD greenhouse gas permits issued as part of Step 2 of the Tailoring Rule could be rescinded. Removal of the date restriction allows for the rescission of PSD permits that are no longer needed issued by EPA, delegated permitting authorities, or by a permitting authority with SIP-approved NSR program that incorporates 40 CFR 52.21(w). This regulatory revision is incorporated into

11 MAC, Part 2, Chapter 5.2 via the revised IBR date of December 27, 2023.

iii. Revisions to the Guideline on Air Quality Models Appendix W

On December 20, 2016, EPA finalized several additions and changes to its Guideline on Air Quality Models (Guideline), located at 40 CFR part 51, Appendix W.¹³ The Guideline is used by EPA, States, Tribes, and industry to prepare and review permits for new sources of air pollution.¹⁴ State and Tribal air agencies also use the Guideline to revise their plans detailing strategies for reducing emissions and improving air quality in State or Tribal Implementation Plans. EPA’s PSD regulations at 40 CFR 52.21(l) require estimates of ambient concentrations required for PSD to be based on the Guideline, and 40 CFR 51.166(l) requires SIP PSD programs to require that modeling be conducted in accordance with the Guideline.¹⁵ Therefore, modeling under PSD is required to use the December 20, 2016, version of the Guideline.

This regulatory change is incorporated into 11 MAC, Part 2, Chapter 5.2 via the revised IBR date of December 27, 2023.

For iSIP elements C and J to be approved for PSD, a SIP must include a PSD program that meets current Federal requirements. Element D(i)(II) (prong 3) is also approvable when a State’s implementation plan contains a fully approved and up-to-date PSD program. EPA’s regulations at 40 CFR 51.166(l) require SIP PSD provisions to require that modeling be conducted in accordance the Guideline. It is incorporated into EPA’s regulations, satisfying a requirement under the CAA for the EPA to specify with reasonable particularity models to be used in the PSD program. EPA promulgated the most current version of the Guideline on January 17, 2017.¹⁶ Therefore, in order to approve the iSIP PSD elements (*i.e.*, section 110(a)(2)(C), (D)(i)(II) (prong 3) and (J)), and the air quality modeling element of section 110(a)(2)(K),¹⁷ PSD regulations in SIPs are required to

¹³ See “Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter,” 82 FR 5182 (January 17, 2017).

¹⁴ Appendix W provides EPA’s preferred models and other recommended techniques, as well as guidance for their use in estimating ambient concentrations of air pollutants.

¹⁵ 40 CFR 51.166 sets forth the requirements for State PSD programs in SIPs, and 40 CFR 52.21 implements PSD requirements for PSD programs administered by EPA and States with delegated authority.

¹⁶ See 82 FR 5182.

reference the most current version of the Guideline.

iv. Project Emissions Accounting Rule

On November 24, 2020, EPA finalized revisions to the PSD applicability regulations concerning the determination of whether a modification at an existing stationary source constitutes a major modification, as defined in 40 CFR 52.21.¹⁸ EPA added an explanation of “sum of the differences” in 40 CFR 52.21(a)(2)(iv)(g) to clarify that this phrase includes both increases and decreases in emissions calculated for a project. EPA also stated in the preamble to this rule that the decreases considered in Step 1 do not have to be enforceable, though to be evaluated as contemporaneous decreases in Step 2 for future projects, the decreases must be enforceable per 40 CFR 52.21(b)(3)(vi)(b). The regulatory change to 40 CFR 52.21 promulgated in the Project Emissions Accounting is incorporated into 11 MAC Part 2 Chapter 5, Rule 5.2 via the revised IBR date of December 27, 2023.

v. NSR Error Corrections Rule

On June 22, 2021, EPA finalized an NSR Error Corrections Rule to correct non-substantive errors and make conforming changes to address the 1990 CAA Amendments in the NSR rules.¹⁹ The final rule corrects inadvertent typographical and spelling errors, removes court vacated rule language, removes or updates outdated or incorrect cross references, and conforms certain provisions to changes contained in the 1990 CAA Amendments. The NSR regulations in 40 CFR parts 51 and 52 have undergone restructuring and revisions over the years, and a number of inadvertent errors have accumulated during that time. The regulatory revision to 40 CFR 52.21 promulgated in the *NSR Error Corrections Rule* addressing these corrections is incorporated into 11 MAC Part 2 Chapter 5, Rule 5.2 via the revised IBR date of December 27, 2023.

III. EPA’s Approach to the Review of Infrastructure SIP Submissions

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires States to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes

¹⁸ See “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review,” 85 FR 74890 (November 24, 2020).

¹⁹ See “New Source Review Errors Correction,” 86 FR 37918 (July 19, 2021).

¹¹ See 81 FR 35622.

¹² See, “Rescission of Preconstruction Permits Issued under the Clean Air Act,” 81 FR 78043 (November 7, 2016).

that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for iSIP submissions and through regional actions on infrastructure submissions.²⁰

Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting State's implementation plan for facial compliance with statutory and regulatory requirements, not for the State's implementation of its SIP.²¹ EPA has other authority to address any issues concerning a State's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. EPA's Analysis of Mississippi's February 28, 2024, SIP Revision

On February 28, 2024, Mississippi submitted a SIP revision to update references to 40 CFR part 51, Appendix W, and address the PSD and modeling iSIP requirements for the 2015 8-hour ozone NAAQS.²² The SIP revision also amends Mississippi's SIP-approved PSD rules at 11 MAC, Part 2 Chapter 5 to adopt public participation e-notice provisions and other changes to the PSD rules based on an updated IBR date of Federal PSD regulations at 11 MAC, Part 2 Chapter 5 from February 17, 2016, to December 27, 2023 for 40 CFR 52.21, as well as including the IBR date of December 27, 2023, for increment consumption exclusions under 40 CFR 51.166(f). The modeling updates at Chapter 2 and 5 respecting references to Appendix W in 40 CFR 52.21(l) support the State's request to convert EPA's March 1, 2023, conditional approval of the PSD requirements of elements 110(a)(2)(C), (D)(i)(II) (Prong 3), and (J), and the air quality modeling element under section 110(a)(2)(K), of Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP to a full approval. Lastly, the SIP revision makes

minor updates to Mississippi's PSD regulations at Chapter 2 and Chapter 5.

A. Changes to 11 MAC, Part 2, Chapter 2

The SIP-approved version of 11 MAC, Part 2, Chapter 2, Rule 2.5B, *Modeling*, provides at subparagraph 2.5B(1) that all estimates of ambient concentrations of air pollutants shall be based on the requirements specified in the "Guideline on Air Quality Modeling, (Revised)" 40 CFR part 51, Appendix W, which are incorporated herein and adopted by reference. Rule 2.5B(1), is being revised to refer to the version of Appendix W approved in 11 MAC, Part 2, Chapter 5. As further explained in section IV.B(ii) of this document, the incorporation of 40 CFR 52.21 is updated via the revised IBR date to include the most recent version of the Appendix W guidelines, which will ensure its use to estimate ambient concentrations of air pollutants in Mississippi. Additionally, subparagraph 2.5B(2), is being revised to delete the word "Revised" from the first sentence of subparagraph 2. The February 28, 2024, SIP submission provides additional changes to 11 MAC, Part 2, Chapter 2 to address NSR requirements, which will be addressed in a separate rulemaking.

B. Changes to 11 MAC, Part 2, Chapter 5

Mississippi's February 28, 2024, SIP submission, seeks to revise the State's SIP-approved PSD permitting regulations at 11 MAC, Part 2, Chapter 5. The revision updates the IBR date for 40 CFR 52.21 in the Mississippi SIP at Chapter 5 from February 17, 2016, to December 27, 2023, at Rule 5.2. This IBR date change adopts PSD rule revisions EPA promulgated since the State's last IBR update to Rule 5.2 and includes Revisions to the Guideline on Air Quality Models which includes the reference to Appendix W in 40 CFR 52.21(l), project emissions accounting, PSD regulatory corrections, oil and gas source determinations, and preconstruction permit rescissions. The SIP revision also makes administrative changes to Chapter 5 including adding a Chapter table of contents, revising the State regulatory citations to ensure they are referenced consistently throughout the rule,²³ and correcting grammatical

errors. Mississippi's February 28, 2024, SIP revision, also includes minor edits to the citation format of 40 CFR 52.21 at Rule 5.3, *Definition of term "Administrator"* and Rule 5.6, *Applicability*. Mississippi's SIP revision does not make any regulatory or typographical changes at Rule 5.5—*Transmittal of Permit Applications to EPA Administrator*. EPA's analysis below discusses the specific changes to Chapter 5 that EPA is proposing to approve.

i. Chapter 5, Rule 5.1, Purpose of This Regulation

Rule 5.1 of Chapter 5 describes the purpose of Mississippi's Chapter 5 PSD regulations, which is to implement a PSD permitting program in the State as required by Federal regulations at 40 CFR 51.166 and acknowledges that the current regulation replaces any previously approved changes to the Chapter. The February 28, 2024, SIP submission changes the regulation by removing the citations to 40 CFR 51.166 and 52.21 because the Federal PSD requirements at 40 CFR 52.21 and 51.166(f) are now addressed in 11 MAC, Part 2, Chapter 5, Rule 5.2, *Adoption of Federal Rules by Reference* and Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*, respectively. The change adds a reference to 11 MAC, Part 2, Chapter 5 and clarifies that the newly revised regulation replaces and supersedes previously adopted versions. This includes removing the references to the date of last amendment and promulgation of 40 CFR 51.166 and 52.21 since the IBR dates are more appropriately addressed in Rules 5.2 and 5.4. Lastly, the change corrects a misspelling of the word "supersedes," and makes minor formatting changes. EPA proposes to approve Mississippi's February 28, 2024, amendments at Chapter 5, Rule 5.1 because they streamline the description of the purpose of the State's PSD permitting regulations at Chapter 5 and are consistent with Federal PSD regulations.

ii. Chapter 5, Rule 5.2, Adoption of Federal Rules by Reference

Mississippi's SIP revision proposes changes to 11 MAC, Part 2, Chapter 5, *Regulations for the Prevention of Significant Deterioration*, at Rule 5.2, *Adoption of Federal Rules by Reference*, by updating the incorporation by reference date for 40 CFR 52.21 from February 17, 2016, to December 27, 2023, with the exception of exclusions

abbreviated version (e.g., 11 Miss. Admin. Code Pt. 2, R. 2.4.).

²⁰ EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions including EPA's prior actions on Mississippi infrastructure SIPs such as the action to address the 2012 PM_{2.5} NAAQS. See 81 FR 36848 (June 8, 2016).

²¹ See *Mont. Envtl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

²² The February 28, 2024, submittal contains changes to other SIP-approved rules that are not addressed in this notice. EPA will act on those rules in a separate rulemaking.

²³ For example, the first appearance of a State regulation is cited in its entirety followed by the citation approved by the Mississippi Administrative Procedures Act for use in the Mississippi Administrative Code (e.g., "Permit Regulations for the Construction and/or Operation of Air Emissions Equipment," 11 Miss. Admin. Code Pt. 2, Ch. 2.). In the remainder of the regulation, citations are the

listed in Rule 5.2.²⁴ The IBR date change has the effect of incorporating PSD-related rule revisions EPA has promulgated since February 17, 2016, through December 27, 2023, discussed in section II.C of this document, which ensures that the most recent version of Appendix W will be used when considering air quality modeling for PSD purposes in Mississippi. Mississippi's February 28, 2024, SIP revision also revises 11 MAC, Part 2, Chapter 2, Rule 2.5(B) to reference the version of Appendix W approved in Chapter 5 (see section IV.A discussion above). Thus, by cross-referencing 11 MAC, Part 2, Chapter 5 for purposes of modeling ambient concentrations of air pollutants in 11 MAC, Part 2, Chapter 2, Rule 2.5(B), the State's regulation ensures that any required modeling of ambient air quality will use the most recent guidelines at Appendix W. EPA proposes to approve Mississippi's February 28, 2024, amendments at Chapter 5, Rule 5.2 respecting the update to the current version of Appendix W. Specifically, Mississippi's proposed changes to Chapter 2, Rule 2.5(B) (see section IV.A of this document) and Chapter 5, Rule 5.2 will have the combined effect of incorporating the latest version of Appendix W, and, if finalized, will satisfy the requirements of the PSD and modeling elements for the 2015 8-hour ozone infrastructure SIP. Thus, EPA is proposing to find that Mississippi has satisfied the requirements of the PSD and modeling elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), (J), and (K) for the 2015 8-hour ozone NAAQS infrastructure SIP and met the commitment associated with the March 1, 2023, conditional approval discussed in section II.A of this document and proposing to convert the conditional approval of these elements of Mississippi's January 25, 2021, infrastructure SIP submission to a full approval.

Mississippi's IBR update also incorporates the 40 CFR 52.21(b)(6) Federal PSD updates promulgated in the May 12, 2016, *Oil and Natural Gas Source Determinations Rule*, which clarifies the meaning of the term "adjacent" for purposes of evaluating whether onshore activities belonging to SIC major group 13 (Oil and Gas Extraction) are considered contiguous

and adjacent with respect to determining the extent of the stationary source (see section II.C.i of this document). MDEQ's February 28, 2024, SIP submission formally adopts EPA's regulations regarding evaluating onshore oil and natural gas activities for adjacency. The meaning of "adjacency" for onshore activities is addressed in the definition of "building, structure, facility, or installation" term found in 40 CFR 52.21(b)(6) and clarifies PSD applicability for the onshore oil and natural gas industry. This revision is adopted by reference into Mississippi's PSD regulations at 11 MAC Part 2, Chapter 5, Rule 5.2 through the IBR update. EPA proposes to approve Mississippi's revision at Chapter 5, Rule 5.2 regarding the regulatory changes at 40 CFR 52.21(b)(6) promulgated in the *Oil and Natural Gas Source Determinations Rule* because it is consistent with the Federal PSD permitting regulations.

Mississippi's IBR update also incorporates PSD permitting changes at 40 CFR 52.21(a)(2)(iv) promulgated in EPA's November 24, 2020, *Project Emissions Accounting Rule*, regarding the PSD applicability for determining whether a modification at an existing stationary source constitutes a major modification, as defined in 40 CFR 52.21. This regulatory revision was consistent with EPA's interpretation of its pre-PEA regulations, as articulated in EPA guidance issued in the March 13, 2018, EPA memorandum from E. Scott Pruitt to the Regional Administrators titled *Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program*.²⁵ Project emissions accounting allows both increases and decreases resulting from a project to be considered in "Step 1" of the PSD applicability process. Specifically, the *Project Emissions Accounting Rule* finalized clarifications to the Step 1 provisions of the major modification applicability test of the PSD rule at 40 CFR 52.21(a)(2)(iv) that includes changes to 52.21(a)(2)(iv)(f), 40 CFR 52.21(a)(2)(iv)(c), 40 CFR

²⁵ MDEQ has previously approved the use of the 2018 EPA Memo in various projects at existing major stationary sources. For example, project emissions accounting was used to account for decreases due to the permanent shutdown and subsequent replacement of a dryer at the Tronox LLC, Hamilton Facility [Agency Interest No. 8587; Air Permit No. 1840-00035]. An air construction permit was issued on March 31, 2020, which addressed this replacement. As a result of including decreases from the removed dryer in Step 1 of the PSD analysis, the evaluation of contemporaneous increases and decreases was not required because the Step 1 changes were below the significant emissions rates specified in the PSD regulations. This proposed action is not soliciting comments on previous issued final PSD permits.

52.21(a)(2)(iv)(d) as discussed in section II.C.iv of this document. See 85 FR 74890. These changes apply to projects that involve multiple types of emissions units and provide that both emission increases and decreases can be considered in Step 1 of the NSR major modification applicability test in the same manner as they are considered for projects that only involve existing emissions units or only involve new emissions units. These requirements apply when there is a "reasonable possibility" that the project could still result in a significant emissions increase. Lastly, EPA did not make the regulatory changes in the November 24, 2020, final rule mandatory for adoption by State and local air agencies with approved major NSR programs, but Mississippi elected to adopt these changes through the revised IBR date of December 27, 2023. EPA proposes to approve into the Mississippi SIP amendments to 40 CFR 52.21(a)(2)(iv) promulgated in the *Project Emissions Accounting Rule* because these updates are consistent with the Federal PSD permitting regulations.

Mississippi's IBR update also incorporates PSD revisions promulgated in EPA's July 19, 2021, *New Source Review Errors Correction Rule* as discussed above in section II.C.v which corrects minor, inadvertent, and non-substantive errors in 40 CFR parts 51 and 52 that govern NSR permitting programs and updates to regulatory text. Specifically, EPA's rule corrects inadvertent typographical and spelling errors, removes court vacated rule language, removes or updates outdated or incorrect cross references, and conforms certain provisions to changes contained in the 1990 CAA Amendments. Due to the voluminous number of corrections promulgated in EPA's July 19, 2021, please refer to the "Reference Table of New Source Review Error Corrections—Final Rule" compilation of finalized changes at 40 CFR 52.21 in the Docket for this proposal action.²⁶ EPA proposes to approve into the Mississippi SIP amendments to 40 CFR 52.21 promulgated in the *New Source Errors Correction Rule* because these updates are minor updates and corrections and are consistent with the Federal PSD permitting regulations.

Mississippi's IBR update also incorporates changes to 40 CFR 52.21 promulgated in the *Permit Rescission Rule* finalized November 7, 2016, which

²⁴ The version of Rule 5.2 in the SIP does not incorporate by reference the provisions at 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (76 FR 17548 (March 30, 2011)). If EPA finalizes this action as proposed, it will retain the text in the explanation column for Rule 5.2 at 40 CFR 52.1270(c).

²⁶ See "Reference Table of New Source Review Error Corrections—Final Rule," Docket ID: EPA-HQ-OAR-2019-0435-0019, for 40 CFR 52.21 (<http://www.regulations.gov/document/EPA-HQ-OAR-2019-0435-0019>).

removes a date restriction that limited the use of the permit rescission provision (*i.e.*, a provision that allows a PSD permit to be cancelled). Specifically, the changes to 40 CFR 52.21 include: (1) revising 40 CFR 52.21(w)(2) to remove the July 30, 1987, date restriction; (2) revising 40 CFR 52.21(w)(3) to change the word “shall” to “may” to make clear that this provision does not create a mandatory duty on the Administrator to grant a rescission request;²⁷ and (3) revising 40 CFR 52.21(w)(1) to appropriately cross reference paragraph (r) and not paragraph (s) of EPA’s PSD regulations.²⁸ This change allows for the rescission of PSD permits in accordance with the PSD criteria for permit rescission without the date restriction for PSD permits issued by EPA, delegated permitting authorities, or by a permitting authority with a SIP-approved NSR program that incorporates 40 CFR 52.21(w). EPA proposes to approve into the Mississippi SIP amendments to 40 CFR 52.21 promulgated in the *Permit Rescission Rule* because these updates are consistent with the Federal PSD permitting regulations.

Lastly, Mississippi’s February 28, 2024, SIP revision makes administrative amendments to Rule 5.2 including removing the term “phrases” that are not incorporated, since the phrases are simply the section headers and not specific phrases used throughout the regulations. EPA is proposing to approve Mississippi’s IBR update at Chapter 5, Rule 5.2 adopting the version of 40 CFR 52.21 PSD permitting regulations in the Mississippi SIP as of December 27, 2023 (with the exception of exclusions established at Rule 5.2)²⁹ for the reasons discussed above in section IV.B.

²⁷ Specifically, EPA proposed to replace the word “shall” with the word “may” in this provision to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 “would not apply to the source or modification.” See 81 FR 78043.

²⁸ Before the *Permit Rescission Rule* was finalized in 2016, only permits based on rules issued on or before July 30, 1987, and any PSD greenhouse gas permits issued as part of Step 2 of the Tailoring Rule could be rescinded. Removal of the date restriction allows for the rescission of EPA-issued or delegated permitting authorities-issued PSD permits that are no longer needed and clarifies the implementing provisions. See FACT SHEET Rescission of Preconstruction Permits Issued Under the Clean Air Act (https://www.epa.gov/sites/default/files/2017-10/documents/permitrescission_factsheet.pdf).

²⁹ The SIP revision does not propose any changes to these exclusions.

iii. Chapter 5, Rule 5.4, Adoption of Federal Rules for Exclusions From Increment Consumption

Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*, adopts by reference 40 CFR 51.166(f) (Exclusions from increment consumption) excluding the phrase “The plan may provide that” and with certain changes listed in Rule 5.4. The February 28, 2024, SIP revision incorporates into the Mississippi the version of 40 CFR 51.166(f) promulgated as of December 27, 2023. No amendments were promulgated for 40 CFR 51.166(f) from the previous incorporation date of February 17, 2017, to the proposed December 27, 2023, IBR date. Rule 5.4 is also amended to remove the adoption by reference of the public participation requirements in 40 CFR 51.166(q) because the State is adopting public participation provisions in Rule 5.7. Additionally, Rule 5.4 adds a clarification for when the term “Administrator,” in the adopted text at 40 CFR 51.166(f), should mean the Mississippi Environmental Quality Permit Board and when the term should continue to refer to the EPA Administrator. Prior to the changes provided in the February 28, 2024, SIP submission, the term continued to refer to the EPA Administrator at 40 CFR 51.166 (f)(1)(v), (f)(4), and (q)(2)(iv) only; however, the current changes remove (q)(2)(iv) from inclusion at Rule 5.4 since the adoption of 40 CFR 51.166(q) was removed from Rule 5.4. Additionally, Rule 5.4 C, D, and E, which define other phrases in 51.166(q)(l) and (q)(2), including, “specified time period,” “reviewing authority,” and “one year” have also been removed because the phrases are simply the section headers and not specific phrases used throughout the regulations. EPA is proposing to approve Mississippi’s February 28, 2024, amendments to 11 MAC Part 2, Chapter. 5, Rule 5.4 because they are consistent with EPA’s PSD permitting regulations.

iv. Chapter 5, Rule 5.7, Public Participation

Mississippi’s February 28, 2024, SIP revision adds new Rule 5.7, *Public Participation*, to 11 MAC, Part 2, Chapter 5. MDEQ had previously incorporated by reference the public participation requirements of 40 CFR 51.166(q) in Rule 5.4. However, Mississippi removed the IBR of 40 CFR 51.166(q) public participation regulations from Rule 5.4 as part the February 28, 2024, SIP submission (see section IV.B.iii of this document) and

instead set out the public participation regulations as a new Rule 5.7. The new Rule 5.7 adds provisions established in EPA’s October 5, 2016, *Public Participation Rule*, which removed the mandatory requirement to provide public notice of a draft permit through publication in a newspaper and, instead, allow for electronic notice (e-notice) of permitting actions via a public website identified by the reviewing authority.³⁰ Thus, Mississippi’s new Rule 5.7 meets the PSD permitting public participation requirements at 40 CFR 51.166(q), including the allowance for e-notice of draft PSD permitting actions via a public website to streamline the notification process for draft permits and establish greater transparency and public engagement for the regulated community and general public in Mississippi.

Rule 5.7 requires e-notice on the MDEQ website, replacing the previous requirement for newspaper publication. This change aligns with the Federal regulations specified in 40 CFR 51.166(q), which permit electronic notification as an acceptable alternative to newspaper publication. EPA’s 2016 Public Participation Rule amended a portion of the PSD Federal regulations at 51.166(q)(2)(ii), (iii), (vi), and (viii) to implement the shift from mandatory newspaper noticing to e-notice for PSD permits. Mississippi’s Rule 5.7 meets the public participation requirements from 40 CFR 51.166(q) in their entirety which includes the e-notice amendments promulgated in the *Public Participation Rule*. Specifically, Rule 5.7 establishes subparagraphs (A) and (B) which are equivalent to the public participation regulations at 40 CFR 51.166(q)(1) and (2)(i) through (viii) (*i.e.*, Federal public participation regulations that were previously incorporated by reference at Rule 5.4). Additionally, Rules 5.7(B)1, (B)2, (B)3, (B)6, and (B)8 also include those changes at 40 CFR 51.166(q)(2)(ii), (iii), (vi), and (viii) that were promulgated in EPA’s 2016 *Public Participation Rule* respecting (*i.e.*, removal of the mandatory requirement

³⁰ The selected notification method (*i.e.*, either newspaper or website) is known as the “consistent noticing method” and must be used for all permits subject to notice under the NSR or Title V permit programs. EPA leaves discretion to the reviewing authority (*i.e.*, MDEQ) to supplement the consistent noticing method with other methods. If using the public website as the consistent noticing method, the reviewing authority must also provide an electronic copy of the draft permit for review, in addition to the notice itself, and provide instructions regarding how to access the administrative record for the draft permit and request and/or attend a public hearing. This information must be made available on the public website for the duration of the public comment period.

to provide public notice of a draft permit (and certain other program actions) through publication in a newspaper and to instead allow for electronic noticing (“e-notice”). Rules 5.7(A), 5.7(B)4, (B)5, and (B)7 set out the equivalent 40 CFR 51.166(q)(2)(i), (iv), (v), and (vii) public participation regulations that were previously IBR at Rule 5.4 but were not amended in EPA’s *Public Participation Rule*. Below provides a description of the public participation requirements in Rule 5.7:

- Rule 5.7(A) sets out the requirements of 40 CFR 51.166(q)(1) and identifies MDEQ (“the Department”) as the reviewing authority. The rule requires Mississippi to inform applicants of the completeness of their application within a 30-day timeframe indicating either its completeness or any deficiencies. The rule also provides that, in case of deficiencies, the application’s receipt date shall be deemed as the day when all requisite information was received by the Department.

Mississippi’s February 28, 2024, SIP revision simply moves the previously incorporated version of 40 CFR 51.166(q)(1) in Rule 5.4 to Rule 5.7(A).

- Rule 5.7(B) sets out the requirements of 40 CFR 51.166(q)(2) to review and process complete applications within 150 days of receiving a complete permit application.

- Rule 5.7(B)1 sets out the requirements of 40 CFR 51.166(q)(2)(i) that the Department shall make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

- Rule 5.7(B)2 sets out the requirements of 40 CFR 51.166(q)(2)(ii) to make available in at least one location in each region in which the proposed source would be constructed, a copy of related permit materials such as the application and summary documentation used to make preliminary determinations and allows the option to provide said materials on the Department’s website in lieu of a physical location.

- Rule 5.7(B)3 sets out requirements of 40 CFR 51.166(q)(2)(iii) and establishes the Department’s website as the consistent noticing method rather than a newspaper of general circulation. The public notice, draft permit, and information on accessing the administrative record and requesting and/or attending a public hearing, which is contained in the public notice document, will be available on the MDEQ website for the duration of the public comment period. Mississippi will publish notices on the Department’s website, allowing for at

least 30 days for public comment, and may, when it deems appropriate, supplement the e-notice with other noticing methods for individual permits.

- Rule 5.7(B)4 sets out the requirements of 40 CFR 51.166(q)(2)(iv) establishing requirements for the reviewing authority to send a copy of the public notice to the applicant, the EPA Administrator, and other interested officials and agencies. This also includes State or local air pollution control agencies, city and county chief executives, regional land use planning agencies, and any Federal land manager or Indian governing body potentially affected by emissions from the source or modification. Mississippi’s February 28, 2024, SIP revision simply moves the previously incorporated version of 40 CFR 51.166(q)(2)(iv) in Rule 5.4 to Rule 5.7B(4).

- Rule 5.7(B)5 sets out the requirements of 40 CFR 51.166(q)(2)(vi) providing an opportunity for a public hearing where interested individuals can present written or oral comments on the air quality impact of the proposed source, alternatives to it, required control technology, and other appropriate considerations. The SIP revision moves the previously incorporated version of 40 CFR 51.166(q)(1) in Rule 5.4 to Rule 5.7B(5).

- Rule 5.7(B)6 sets out the requirements of 40 CFR 51.166(q)(2)(vi) and requires MDEQ to make available for public inspection, public comments received at a public hearing or during the comment period on the MDEQ website, rather than at a physical location. Specifically, the Department is required to consider all written comments submitted within the specified time frame mentioned in the public notice, as well as any comments received during public hearings when making the final decision on the applications approval. All comments will be made available for public inspection at the same location or website where preconstruction information was provided.

- Rule 5.7(B)7 sets out the requirements at 51.166(q)(2)(vii) that the Department shall make a final determination on whether construction should be approved, approved with conditions, or disapproved after making a preliminary determination under subparagraph B(1). Mississippi’s February 28, 2024, SIP revision simply moves the previously incorporated version of 40 CFR 51.166(q)(2)(vii) in Rule 5.4. to Rule 5.7(B)7.

- Rule 5.7(B)8 sets out the requirements of 40 CFR 51.166(q)(2)(viii) and requires MDEQ to

make the final determination on whether construction should be approved, approved with conditions, or disapproved, available at the same location or on the same MDEQ website MDEQ used for preconstruction information and public comments. Specifically, the Department shall notify the applicant in writing of the final determination and ensure that this notification is accessible for public inspection at the same location or website where the Department made available preconstruction information and public comments relating to the proposed source or modification.

Mississippi’s February 28, 2024, SIP revision sets out at Rule 5.7 the requirements for PSD public participation from 40 CFR 51.166(q) as amended on October 5, 2016, which includes those changes promulgated in the *Public Participation Rule*. As discussed above, Mississippi’s February 28, 2024, SIP revision removes the IBR of the PSD public participation requirements at 40 CFR 51.166(q) and instead sets out these Federal requirements at Rule 5.7 which includes the amendments promulgated in EPA’s 2016 *Public Participation Rule*. EPA is proposing to approve Mississippi’s February 28, 2024, SIP submission because the SIP revision is consistent with the PSD public participation regulations at 40 CFR 51.166(q).

Based on EPA’s analysis of the proposed aforementioned revisions to Mississippi’s PSD permitting regulations at 11 MAC Part 2, Chapter 5, EPA is proposing to approve these changes because the revisions are consistent with the CAA and the PSD program requirements of 40 CFR 51.166 and 52.21.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in section IV of this preamble, EPA is proposing to incorporate by reference Mississippi Rules 11 MAC, Part 2, Chapter 2, Rules 2.5B(1) and B(2), *Application Review*; 11 MAC, Part 2, Chapter 5, Rule 5.1, *Purpose of this regulation*; Rule 5.2, *Adoption of Federal Rules by Reference*; ³¹ Rule 5.3, *Definition of term “Administrator”*; Rule 5.4, *Adoption of Federal Rules for*

³¹ Rule 5.2 does not incorporate by reference the provisions at 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (76 FR 17548 (March 30, 2011)). If EPA finalizes this action as proposed, it will retain the text in the explanation column for Rule 5.2 at 40 CFR 52.1270(c).

Exclusions from Increment Consumption; Rule 5.6, *Applicability*; and Rule 5.7, *Public Participation*, all of which are State effective on February 22, 2024. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Proposed Action

EPA is proposing to approve changes to 11 MAC Part 2, Chapter 2, Rule 2.5B(1) and B(2), *Application Review*; 11 MAC, Part 2, Chapter 5, Rule 5.1, *Purpose of this regulation*; Rule 5.2, *Adoption of Federal Rules by Reference*; Rule 5.3, *Definition of term “Administrator”*; Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*; Rule 5.6 *Applicability*; and Rule 5.7, *Public Participation*. In addition, EPA is proposing to convert the conditional approval of the portions of the 2015 8-hour ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K) to a full approval.

VII. 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. See 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 proposed action merely proposes to approve 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);

- 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 proposed 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, 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.”

MDEQ did not evaluate EJ 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 proposed action. Due to the nature of the action being proposed here, this proposed 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 proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 11, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–21007 Filed 9–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0301; FRL–10191–03–R3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regional Haze State Implementation Plan for the Second Implementation Period; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule that published August 19, 2024. The current comment period for the proposed rule was scheduled to close on September 18, 2024. The EPA is extending the comment period for the proposed action to September 23, 2024.

DATES: The comment period for the proposed rule published on August 19, 2024, at 89 FR 67018 is extended. Comments must be received on or before September 23, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0301 at www.regulations.gov. Additional instructions to comment can be found in the notice of proposed rulemaking published August 19, 2024, at 89 FR 67018.

FOR FURTHER INFORMATION CONTACT: Adam Yarina, U.S. Environmental Protection Agency, Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center,

1600 John F Kennedy Boulevard,
Philadelphia, Pennsylvania 19103. The
telephone number is (215) 814–2108.
Mr. Yarina can also be reached via
electronic mail at yarina.adam@epa.gov.

SUPPLEMENTARY INFORMATION: On August
19, 2024, the EPA published the
proposed rule “Approval and

Promulgation of Air Quality
Implementation Plans; Delaware;
Regional Haze State Implementation
Plan for the Second Implementation
Period” in the **Federal Register** (89 FR
67018). This action extends the
comment period to give stakeholders
additional time to review materials and

prepare comments; therefore, EPA is
extending the comment period to be
received by September 23, 2024.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–20837 Filed 9–13–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 89, No. 179

Monday, September 16, 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

Agricultural Marketing Service

[Doc. No. AMS-FGIS-24-0056]

Opportunity To Comment on Applicants for the Southeast Texas U.S. Grain Standards Act Designation Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Midsouth Grain Inspection Service and Grain Inspection Services of Texas, LLC have applied for designation under the U.S. Grain Standards Act to provide official services in the Southeast Texas designation area. The geographic area is described in the **SUPPLEMENTARY INFORMATION** section below. The Agricultural Marketing Service (AMS) is asking for comments on these applicants.

DATES: Comments must be received by October 1, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice and view the applications:

To Submit Comments: Go to *Regulations.gov* (<https://www.regulations.gov>). Instructions for submitting and reading comments are detailed on the site. All comments must be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

To Read Applications and Comments: If you would like to view the

applications, please contact us at FGISQACD@usda.gov. All comments will be available for public inspection online at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Jennifer Weiland, Grain Marketing Specialist, Telephone 202-989-5995; Email: jennifer.j.weiland@usda.gov or FGISQACD@usda.gov.

SUPPLEMENTARY INFORMATION: In the July 18, 2024 edition of the **Federal Register** (89 FR 58327), AMS requested applications from persons interested in providing official services under the U.S. Grain Standards Act in the Southeast Texas designation area. There are two applicants for the Southeast Texas area: Midsouth Grain Inspection Service (Midsouth Grain) and Grain Inspection Services of Texas, LLC (Texas Grain). Both applicants are currently designated official agencies and both applicants have applied for the entire unassigned area.

The Southeast Texas designation area includes the following counties in Texas: Aransas, Bee, Brazoria, Brooks, Calhoun, Cameron, Chambers, Colorado, Dimmit, Duval, Fort Bend, Galveston, Goliad, Harris, Hidalgo, Jackson, Jefferson, Jim Hogg, Jim Wells, Kennedy, Kleberg, La Salle, Live Oak, Matagorda, McMullen, Nueces, Refugio, San Patricio, Starr, Victoria, Waller, Webb, Wharton, Willacy, and Zapata. This area excludes any established or future export port locations, which are serviced by the Federal Grain Inspection Service.

This notice provides interested persons the opportunity to comment on the quality of services provided by Midsouth Grain and Texas Grain. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicant(s). All comments should be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov>.

AMS considers applications, comments, and other available information, such as audit reports and site visits, when determining which applicants will be designated.

Authority: 7 U.S.C. 71-87k.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024-20981 Filed 9-13-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 16, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 16, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Assignments of Payments and Joint Payment Authorizations; Request for Waiver.

OMB Control Number: 0560–0183.

Summary of Collection: The Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)) authorizes producers to assign, in writing, Farm Service Agency (FSA) conservation program payments. The statute requires that any such assignment be signed and witnessed. The Agricultural Act of 1949, as amended, extends that authority to Commodity Credit Corporation (CCC) programs, including rice, feed grains, cotton, and wheat. When the recipient of an FSA, NRCS, or CCC payment

chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. All federal nontax payments must be made by EFT, unless a waiver applies which requires certain criteria to be granted. FSA will collect information using forms CCC–36, CCC 37, CCC–251, CCC–252 and FPAC–FM–12.

Need and Use of the Information: The information collected on the forms will be used by FSA and NRCS employees in order to record the payment or contract being assigned, the amount of the assignment, the date of the assignment, and the name and address of the assignee and the assignor. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to issue program payments jointly at the request of the producer and also terminate joint payments at the request of both the producer and joint payee.

Description of Respondent: Farms.

Number of Respondents: 202,612.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 72,962.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–20911 Filed 9–13–24; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE**Submission for OMB Review; Comment Request**

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 16, 2024 will be considered. Written comments

and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Coronavirus Food Assistance Program 2 (CFAP2).

OMB Control Number: 0560–0297.

Summary of Collection: This information collection request is required to support the Coronavirus Food Assistance Program 2 (CFAP 2) information collection activities to provide payments to eligible producers who, with respect to their agricultural commodities, have been impacted by the effects of the COVID–19 pandemic. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibility and assist in the producer's payment calculations. Producers must submit a completed CFAP 2 application and additional documentation for eligibility, such as certifications of compliance with adjusted gross income provisions and conservation compliance activities; those additional documents and forms must be submitted no later than 60 days from the date a producer signs the application. Contract producers are now eligible to receive direct payments that is currently included in the request.

Need and Use of the Information: In order to determine whether a producer is eligible for CFAP and to calculate a payment, a producer is required to submit AD–3117, CFAP application; AD–3117A—Continuation Form for CFAP-Milk Production Modification; AD–3117B—Continuation Sheet for Coronavirus Food Assistance Program 2 (CFAP 2) Application for Contract Producers, CCC–902, Farm Operating Plan for Payment Eligibility, Parts A & B; CCC–901, Member Information for Legal Entities, if applicable; CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and CCC–942,

Certification of Income from Farming, Ranching, and Forestry Operations, Optional, and AD-1026—Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification.

The information submitted by respondents will be used by FSA and AMS to determine eligibility and distribute payments to eligible producers under CFAP. Failure to solicit applications will result in failure to provide payments to eligible producers.

Affected Public: Farms; (Farmers and Producers).

Number of Respondents: 1,248,901.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 957,127.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-20923 Filed 9-13-24; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 16, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of

information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Control and Eradication of African Swine Fever; Conditions for Payment of Indemnity Claims.

OMB Control Number: 0579-0491.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if required to prevent the spread of any livestock or poultry pest or disease. The AHPA is contained in Title X, Subtitle E, Sections 10401-18 of Public Law 107-171, May 13, 2002, the Farm Security and Rural Investment Act of 2002; 7 U.S.C. 8301, et. seq.

Part of the mission of the Veterinary Services (VS) business unit of the Animal and Plant Health Inspection Service (APHIS) is preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. In the past several years, there have been significant worldwide outbreaks of African swine fever (ASF) and the USDA is committed to working with State and industry partners to keep the virus out of the United States and its territories.

Need and Use of the Information: VS or State personnel, as part of incident management team operations, will collect from herd owners or growers of ASF presumptive positive or positive premises information needed to reimburse the owners or growers for the value of any animals taken and develop a plan for virus elimination so the owner or grower can return to normal business operations.

If the information were conducted less frequently or not at all, APHIS would not be able to develop disease mitigation plans or properly reimburse producers and herd owners for their lost inventory.

Description of Respondents: Businesses or other for-profit; State, Local, and Tribal governments.

Number of Respondents: 40,050.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 2,538,300.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-20983 Filed 9-13-24; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Superior Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Superior Resource Advisory Committee (RAC) will hold two public meetings according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Superior National Forest within Cook, Lake, and St. Louis counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: A virtual meeting will be held on Tuesday, October 1, 2024, from 10 a.m. to 11:15 a.m. central daylight time and on Friday, October 11, 2024, from 9 a.m. to 1 p.m. central daylight time.

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. central daylight time on September 27, 2024. Written public comments will be accepted until 11:59 p.m. central daylight time on September 20, 2024. Comments submitted after this date will be provided to the committee by the Forest Service, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: These two meetings will be held virtually. The public may join virtually via teleconference and/or videoconference. Resource Advisory Committee information and meeting details can be found online at <https://www.fs.usda.gov/main/superior/>

workingtogether/advisorycommittees or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to emily.munter@usda.gov or via mail (postmarked) to the Superior National Forest, Attn: Emily Munter, 8901 Grand Avenue Place, Duluth, MN 55808. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Central Daylight Time on September 27, 2024, and speakers can only register for one speaking slot. Oral comment requests must be sent by email to emily.munter@usda.gov or via mail (postmarked) to the Superior National Forest, Attn: Emily Munter, 8901 Grand Avenue Place, Duluth, MN 55808.

FOR FURTHER INFORMATION CONTACT: Ellen Bogardus-Szymaniak, Superior RAC Designated Federal Officer, by phone at (218) 663-8061 or email at ellen.bogardus-szymaniak@usda.gov; or Emily Munter, Superior RAC Coordinator, by phone at (218) 451-8591 or email at emily.munter@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Add, remove, or edit the below agenda items, as needed;
2. Hear from the Forest Service and discuss recreation fee proposals;
3. Make recommendations on recreation fee proposals;
4. Receive updates on previously funded Title II projects;
5. Establish timeline for soliciting new Title II project proposals;
6. Other.

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 10 days after the meeting date listed under **DATES**.

Please contact the person(s) listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable

accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720-2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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/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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: September 5, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024-20398 Filed 9-13-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket # RUS-24-AGENCY-0030]

Notice of Revision of a Currently Approved Information Collection

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's Rural Utilities Service (RUS) invites comments on this revision to a currently approved information collection package for its Technical Assistance Programs, for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Adyam Negasi, RD Innovation Center—Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250; Tel: 202-221-9298; Email: Adyam.Negasi@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 an information collection package that RUS is submitting to OMB for renewal and approval.

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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent through the Federal eRulemaking Portal, [regulations.gov](https://www.regulations.gov). In the "Search for dockets and documents on agency actions" box enter the Docket No. RUS-24-AGENCY-0030 and click the "Search" button. From the search results: click on or locate the document title and select the "Comment" button. To submit a comment: Insert comments under the "Comment" title. 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 (<https://www.regulations.gov>).

Title: Technical Assistance Programs.

OMB Control Number: 0572–0112.

Type of Request: Revision of a currently approved collection.

Abstract: RUS is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, American Indian tribes, and nonprofit corporations to fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Under the CONACT, 7 U.S.C. 1925(a), as amended, section 306(a) (14) (A) authorizes Technical Assistance and Training grants, and 7 U.S.C. 1932(b), section 310B authorizes Solid Waste Management grants. Grants are made for 100 percent of the cost of assistance. The Technical Assistance and Training Grants and Solid Waste Management Grants programs are administered through 7 CFR part 1775.

Estimate of Burden: Public reporting for this collection of information is estimated to average 5.053 hours per response.

Respondents: Public Bodies, non-profits, federally recognized tribes, academic institutions.

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 16.67.

Estimated Total Annual Burden on Respondents: \$307,630.

Copies of this information collection can be obtained from Adyam Negasi, RD Innovation Center—Regulations Management Division, at 202–221–9298 or adyam.negasi@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. 2024–20899 Filed 9–13–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board or TTAB) will hold a meeting on Wednesday, October 9, 2024. The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. The main purpose of this meeting is for Board members to discuss priority issues related to travel and tourism. The final agenda will be posted on the Department of Commerce website for the Board at <https://www.trade.gov/ttab-meetings> at least two days prior to the meeting.

DATES: Wednesday, October 9, 2024, 10 a.m.–12 p.m. EDT. The deadline for members of the public to register for the meeting or to submit written comments for dissemination prior to the meeting is 5 p.m. EDT on Monday, October 7, 2024.

ADDRESSES: The meeting will be held in person with an option to attend virtually. The access information will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted by email to TTAB@trade.gov.

FOR FURTHER INFORMATION CONTACT:

Jennifer Aguinaga, the United States Travel and Tourism Advisory Board, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–2404; email: TTAB@trade.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. Any member of the public requesting to join the meeting is asked to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Members of the public wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of

their prepared remarks by 5 p.m. EDT on Monday, October 7, 2024, for inclusion in the meeting records and for circulation to the members of the Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Aguinaga at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Monday, October 7, 2024, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be transmitted to the Board but may not be considered during the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

This Notice is published pursuant to the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. app., section 10(a)(2). The Committee was established pursuant to section 607 of the Visit America Act, subtitle A of title VI of division BB of the Consolidated Appropriations Act, 2023, Public Law 117–328, and in accordance with the provisions of the FACA, 5 U.S.C. 1001 *et seq.*

Jennifer Aguinaga,

Designated Federal Officer, United States Travel and Tourism Advisory Board.

[FR Doc. 2024–20984 Filed 9–13–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 31, 2024, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on certain pasta (pasta) from Italy. For these final results, Commerce continues to find that Gruppo Milo SpA (Gruppo Milo) is the successor-in-interest to Gruppo Alimentare Mediterraneo Milo Srl (GRAMM) and should be assigned the same AD cash deposit rate as GRAMM for purposes of the AD order on pasta from Italy.

DATES: Applicable September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Peter Zukowski, AD/CVD Operations,

Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0189.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2024, Commerce published the *Preliminary Results*,¹ determining that Gruppo Milo is the successor-in-interest to GRAMM for purposes of determining AD cash deposits and liabilities, and provided all interested parties with an opportunity to comment.²

Scope of the Order 3

The merchandise subject to this *Order* is certain pasta from Italy. The product is currently classified under subheadings 1901.90.9095 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the *Order* is dispositive. For a complete description of the scope of the *Order*, see the *Preliminary Results*.⁴

Final Results of CCR

Because we received no comments from any interested party, these final results remain unchanged from the *Preliminary Results* and no decision memorandum accompanies this notice. Specifically, Commerce continues to find that Grupo Milo is the successor-in-interest to GRAMM and that, consistent with our established practice, Grupo Milo should receive the AD cash deposit rate previously assigned to GRAMM.

Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Gruppo Milo and entered, or withdrawn from the warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 5.30 percent, which is the current AD cash deposit rate for GRAMM.⁵ This cash deposit requirement shall remain in effect until further notice.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing this determination and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: September 10, 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.

[FR Doc. 2024-20990 Filed 9-13-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Documentation of Fish Harvest

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA), on or after the date of publication of this notice. We invite the public and other Federal agencies to comment on proposed and continuing information collections, which help us to assess the impact of our information collection requirements and minimize the public's reporting burden. The National Marine Fisheries Service (NMFS) previously requested public comments for 60 days via a notice published in the **Federal Register** on May 14, 2024. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Documentation of Fish Harvest.
OMB Control Number: 0648-0365.

Form Number(s): None.

Type of Request: Regular submission—extension of a current information collection.

Estimated Number of Respondents: 379.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 63 hours.

Needs and Uses: The NMFS Southeast Regional Office proposes to extend the information collection currently approved under OMB Control Number 0648-0365.

The NMFS Southeast Regional Office manages commercial fishing in Federal waters of the South Atlantic under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, which is also known as the Magnuson-Stevens Act.

Federally permitted seafood dealers who process or sell snapper-grouper species during seasonal fishery closures in the South Atlantic for those applicable species must maintain documentation, as specified in 50 CFR part 300 subpart K and 50 CFR 622.192(i), that such fish were harvested from areas other than state or Federal waters in the South Atlantic. The applicable snapper-grouper species are greater amberjack, gag, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby, and coney. The documentation includes information on the vessel that harvested the fish, and where and when the fish were offloaded from the vessel. NMFS requires the information for the enforcement of fishery regulations at 50 CFR 622, subpart I.

Affected Public: Business or other for-profit organizations.

Frequency: As needed.

Respondent's Obligation: Mandatory.

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

This information collection request may be viewed at <https://www.reginfo.gov>. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and

¹ See *Certain Pasta from Italy: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 89 FR 61398 (July 31, 2024) (*Preliminary Results*).

² *Id.*, 89 FR at 61400.

³ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996) (*Order*).

⁴ See *Preliminary Results*, 89 FR at 61398-9.

⁵ See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57428 (December 5, 2017).

entering either the title of the collection or the OMB Control Number 0648–0365.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–20943 Filed 9–13–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE269]

Fall Meeting of the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2024 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held on October 9–10, 2024. There will be an open session on Wednesday, October 9, 2024, from 9 a.m. through approximately 12:30 p.m. The remainder of the meeting will be closed to the public and is expected to end by 1 p.m. on October 10. Interested members of the public may present their views during the public comment session on October 9, 2024, or submit written comments by October 2, 2024 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Silver Spring DC North, 8777 Georgia Ave., Silver Spring, MD. Written comments should be sent via email to bryan.keller@noaa.gov. Comments may also be sent via mail to Bryan Keller at NMFS, Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, (301) 427–7725 or at bryan.keller@noaa.gov.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 9–10, 2024, first in an open session to consider information on the status of Atlantic highly migratory species and other scientific matters and then in a closed session to discuss sensitive matters

related to their conservation and management. The open session will be from 9 a.m. to 12:30 p.m. on October 9, 2024, including an opportunity for public comment beginning at approximately 12:00 p.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 2, 2024 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations on the conservation and management of Atlantic highly migratory species and related matters.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bryan Keller at bryan.keller@noaa.gov at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: September 10, 2024.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2024–20940 Filed 9–13–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Fishing Capacity Reduction Program/Buyback Requests

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 14, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Fishing Capacity Reduction Program/Buyback Requests.

OMB Control Number: 0648–0376.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 200.

Average Hours Per Response: 0.5 hours for buyback fee collection reports; 4 hours for buyback annual reports.

Total Annual Burden Hours: 930 hours.

Needs and Uses: This request is for extension of a currently approved information collection.

The Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to provide for voluntary reduction of excess fishing capacity through fishing capacity reduction (buyback) programs. Excess fishing capacity decreases fisheries earnings, complicates fishery management, and imperils fishery conservation. The statutory objective of a program is “to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.” Buybacks pay fishermen either to: (1) Surrender their fishing permits; or (2) both surrender their permits and either scrap their fishing vessels or restrict vessel title to prevent fishing. Buybacks

can involve either a Federal or State fishery. Buybacks can be funded via a long-term loan from the Federal government to the fishery (industry-funded buybacks), to be repaid by the industry by post-buyback landing fees, or funded from appropriations (non-industry funded) or other non-loan sources of funds. Programs involving industry-financed loans are authorized by section 1111 of title XI of the Merchant Marine Act, 1936.

NOAA National Marine Fisheries Service (NMFS) established programs to reduce excess fishing capacity by paying fishermen to surrender their vessels/permits. The information collected by NMFS involves the submission of buyback requests by industry, submission of bids, referenda of fishery participants and reporting of collection of fees to repay buyback loans. For buybacks involving State-managed fisheries, the State may be involved in developing the buyback plan and complying with other information requirements. NMFS requests information from participating buyback participants to track repayments of the loans as well as ensure accurate management and monitoring of the loans. The fees for recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for the collection of information.

Information collections associated with loan creation were removed from the 2021 renewal because no new loans are anticipated moving forward, but the **Federal Register** notice published on May 14, 2024 (89 FR 41947) included the burden for these removed activities. That error has been corrected in this notice.

Affected Public: Businesses.

Frequency: Monthly and annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Public Law 104–297 section 312(b)–(e).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and

entering either the title of the collection or the OMB Control Number 0648–0376.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–20942 Filed 9–13–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Petitions

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 10, 2024 during a 60-day comment period (89 FR 56739). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Trademark Petitions.

OMB Control Number: 0651–0061.

Needs and Uses: The United States Patent and Trademark Office (USPTO) administers the Trademark Act (Act), 15 U.S.C. 1051 *et seq.*, which provides for the registration of trademarks, service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

This information collection covers various trademark-related communications to the USPTO, including letters of protest, requests to make special, responses to petition inquiry letters, petitions to make special, requests to restore a filing date, and requests for reinstatement. This information collection also incorporates petitions for ex parte expungement or reexamination (PTO–2312). Ex parte expungement and reexamination proceedings were established by the Trademark Modernization Act of 2020

(TMA), Public Law 116–260 (Dec. 27, 2020), to cancel, either in whole or in part, registered marks for which the required use in commerce was not made. The burden estimate for petitions for ex parte expungement or reexamination was previously contained in OMB Control No. 0651–0086, Changes to Implement Provisions of the Trademark Modernization Act, but is being transferred into this information collection for efficiency. Finally, this information collection consolidates into a single burden estimate the burden for responses to petition inquiry letters (PTO–2305), which was previously reflected in both OMB Control No. 0651–0086 and this information collection.

The information covered in this collection is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. Information relating to the registration of a trademark is made available to the public by the USPTO. However, the release of information in a letter of protest is controlled and may be available only upon request.

Forms:

- PTO–2303 (Letter of Protest)
- PTO–2304 (Request to Make Special)
- PTO–2305 (Response to Petition to Director Inquiry Letter)
- PTO–2306 (Petition to Make Special)
- PTO–2307 (Request to Restore Filing Date)
- PTO–2308 (Request for Reinstatement)
- PTO–2312 (Petition for Expungement or Reexamination Form)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual

Respondents: 5,813 respondents.

Estimated Number of Annual

Responses: 5,813 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 40 minutes (0.67 hours) and 4.5 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 7,893 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$313,260.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view

Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website, www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0061.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include “0651–0061 information request” in the subject line of the message.

- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2024–20963 Filed 9–13–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Improvements to the Coordinated Community Response to Domestic Abuse in Military and Certain Affiliated Personnel (Phase 1); OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 148.

Responses per Respondent: 1.

Annual Responses: 148.

Average Burden per Response: 38.92 minutes.

Annual Burden Hours: 96.

Needs and Uses: The information collection requirement is necessary to conduct a needs assessment for DAVA certification and training and credentialing of DAVAs, perceptions of NACP credentialing, and potential modifications to promote efficiencies, resources, and/or improve DAVA proficiencies.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–21001 Filed 9–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0113]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 16, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Understanding Service Member Experiences with Family Planning; OMB Control Number 0704–0644.

Type of Request: New.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 500.

Needs and Uses: The Independent Review Commission on Sexual Assault in the Military recommended that Active-Duty Service members survivors be authorized to access health care for their sexual trauma, through the Department of Veterans Affairs (VA) without a referral, citing stigma as a significant barrier to accessing mental health care. This recommendation was modified by the Department to explore the feasibility of this recommendation, and whether this addresses stigma and other associated barriers to help-seeking.

The literature review, “Rollison, Julia, et. al. 2023 “Psychological Harms and Treatment of Sexual Assault and Sexual

Harassment in Adults: Systematic and Scoping Review to Inform Improved Care for Military Populations,” identified potential additional barriers to accessing mental health care at the VA for the active-duty population, underscoring the importance of identifying barriers to help-seeking among existing care within the Department.

To best understand the barriers and facilitators to mental health help-seeking among Active-Duty survivors of sexual trauma, information collection from installation stakeholders (DoD personnel who respond to sexual trauma, support, and assist survivors), command leaders, Active-Duty Service members and Active-Duty survivors is required to better understand their attitudes, beliefs, knowledge, and experience with available mental health care. The information collected from these listening sessions will provide critical information necessary to address barriers and make program and policy improvements that facilitate help seeking among sexual trauma supporters.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–21000 Filed 9–13–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for revision under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year approval of its collection, titled United States Energy and Employment Report, OMB Control Number 1910–5179. The proposed collection will collect data from businesses in an expanded definition in-scope industries, quantifying and qualifying employment among energy activities, workforce demographics, wages, benefits, workforce needs, and the industry's perception on the difficulty of recruiting qualified workers. The revision will also allow for more granular data reporting for U.S. territories. The data will be used to generate an annual US Energy and Employment Report.

DATES: Comments regarding this collection must be received on or before October 16, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Vanessa Grisko by email at vanessa.grisko@hq.doe.gov, (240) 388–5944.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) *OMB No.:* 1910–5179;
- (2) *Information Collection Request Title:* United States Energy and Employment Report;

- (3) *Type of Request:* Revision of a currently approved collection;

- (4) *Purpose:* The rapidly changing nature of energy production, distribution, and consumption throughout the U.S. economy is having

a dramatic impact on job creation and economic competitiveness, but is inadequately understood and, in some sectors, incompletely measured by traditional labor market sources. The US Energy and Employment Report Survey will collect data from businesses in an expanded definition of in-scope industries, quantifying and qualifying employment among energy activities, workforce demographics, wages, benefits, workforce needs, and the industry's perception on the difficulty of recruiting qualified workers. The revision will also allow for more granular data reporting for U.S. territories. The data will be used to generate an annual US Energy and Employment Report.

(5) *Annual Estimated Number of Respondents:* 45,400;

(6) *Annual Estimated Number of Total Responses:* 45,400;

(7) *Annual Estimated Number of Burden Hours:* 8,312;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$399,308.

Statutory Authority: Sec. 301 of the Department of Energy Organization Act (42 U.S.C. 7151); sec. 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 764); and sec. 103 of the Energy Reorganization Act of 1974 (42 U.S.C. 5813).

Signing Authority: This document of the Department of Energy was signed on September 10, 2024, by Vanessa Grisko, Chief of Staff, Office of Energy Jobs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 11, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024–21009 Filed 9–13–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0223; FRL-12246-01-OCSPP]

Chlorpyrifos; Notice of Receipt of Requests To Voluntarily Amend Registrations To Terminate Asparagus Use

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of request by Gharda Chemicals International, Inc. (Gharda) to voluntarily amend one chlorpyrifos registration to terminate use on asparagus. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit further review of the request, or unless the registrant withdraws its request. If, and after, this request is granted, any sale, distribution, or use of the product listed in this notice would need to be consistent with the terms as described in the final cancellation order.

DATES: Comments must be received on or before October 16, 2024, whichever occurs later.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2022-0223 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 or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0700; email address: OPPChlorpyrifosInquiries@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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <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/commenting-epa-dockets>.

II. What action is the Agency taking?

This notice announces receipt by the Agency of a request from Gharda to terminate asparagus in one product registration. The affected registration is listed in Table 1 of this Unit. Table 2 of this Unit includes the name and address of record for Gharda.

Unless the Agency receives substantive comments that warrant further review of the request or the registrant withdraws their request, EPA intends to issue a final cancellation order in the **Federal Register** terminating use on asparagus for the registration in Table 1.

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

Gharda has requested that EPA waive the 180-day comment period. Accordingly, EPA is providing a 30-day comment period on the proposed request.

TABLE 1—CHLORPYRIFOS REGISTRATION WITH PENDING REQUEST FOR TERMINATION OF ASPARAGUS

Registration No.	Product name	Company	Uses to be deleted
93182-8	Pilot 15G Chlorpyrifos Agricultural Insecticide.	Gharda Chemicals International, Inc	Asparagus.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY TERMINATION OF ASPARAGUS

EPA Company No.	Company name and address
93182	Gharda Chemicals International, Inc., 4032 Crocker Lake Blvd., Suite 818, Sarasota, FL 34238.

III. 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 cancelled or amended to terminate one or more registered 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**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide at least a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant requests a waiver of the comment period, or

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use termination/deletion should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

V. Provisions for Disposition of Existing Stocks

Existing stocks for the product identified in this document are those stocks of registered pesticide product that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA has determined that the following existing stocks provisions are not inconsistent with the purposes of FIFRA given the limited amount of existing stocks and the limited time allowed for use of the existing stocks outlined below:

- Sale and distribution of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) is permitted until April 30, 2025.
- Use of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) must be consistent with the product labeling. Such use is permitted until June 30, 2025.
- Use of existing stocks of Pilot 15G Chlorpyrifos Agricultural Insecticide (EPA Reg. No. 93182–8) for non-food purposes is permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

After these dates, all respective sale, distribution, and use of existing stocks is prohibited, except for sale and distribution for export consistent with FIFRA section 17 (7 U.S.C. 136o) and for proper disposal in accordance with state regulations.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 9, 2024.

Jean Anne Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2024–20945 Filed 9–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0159; FRL–11684–07–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for July 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or

significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from July 1, 2024, to July 31, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0159, is available online at <https://www.regulations.gov> or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: edelstein.rebecca@epa.gov.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

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

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of “not likely to present an unreasonable risk of injury to health or the environment” may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA

section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- J-24-0005-0008, Biofuel-producing modified microorganism(s), with chromosomally borne modifications (Generic Name).

- J-24-0014-0015, Biopolymer producing modified microorganism, with chromosomally located modifications (Generic Name).

- J-24-0016-0019, Chromosomally modified *Saccharomyces cerevisiae* (Generic Name).

To access EPA's decision document describing the basis of the "not likely to present an unreasonable risk" finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely>.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 10, 2024.

Lisa Christ,

Acting Director, New Chemicals Division,
Office of Pollution Prevention and Toxics.

[FR Doc. 2024-20998 Filed 9-13-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0223; FRL-12245-01-OCSP]P

Chlorpyrifos; Amendment to Existing Stocks Provisions in Kaizen Product Cancellation Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 31, 2022, EPA issued a final order cancelling several products, including one product for which Kaizen Technologies, LLC voluntarily requested cancellation, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency is issuing this notice to amend the existing stocks provisions in the August 31, 2022 order, for the product listed in this document.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA-HQ-OPP-2022-0223, is available online at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-0700; email address: OPPChlorpyrifosInquiries@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

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.

II. What action is the Agency taking?

In its August 31, 2022 Cancellation Order for Certain Chlorpyrifos Registrations (87 FR 53471) (FRL-10138-01-OCSP), EPA granted Kaizen's request to cancel its one chlorpyrifos product: Bifenchlor (EPA Registration Number 86363-11). This order noted that all chlorpyrifos tolerances had been revoked, and thus all use on food and all sale and distribution of existing stocks for the products identified in that order were inconsistent with the purposes of FIFRA, with some exceptions. The August 31, 2022 order permitted existing stocks to be sold and distributed for export and for proper disposal.

Subsequent to the issuance of the August 31, 2022 cancellation order, the U.S. Court of Appeals for the Eighth Circuit vacated EPA's rule revoking all tolerances. *See Red River Valley Sugarbeet Growers Associations, et al. v. Regan*, 85 F.4th 881 (8th Cir. 2023). On February 5, 2024, EPA issued a **Federal Register** notice to amend the Code of Federal Regulations (CFR) to reflect the court's reinstatement of those tolerances (89 FR 7625) (FRL-5993-06-OCSP). At this time, all chlorpyrifos tolerances in effect prior to the 2021 tolerance rule have been reinstated and are currently in effect. *See* 40 CFR 180.342. With the tolerances in place, Kaizen requested an amendment to the terms of the August 31, 2022 cancellation order governing disposition of existing stocks to allow for sale, distribution, and use.

Because the reinstatement of the chlorpyrifos tolerances means that chlorpyrifos products can be used in accordance with their labeling without concern for adulterated food, EPA is amending the August 31, 2022

cancellation order to update the existing stocks provisions as they apply to the following Kaizen product:

- Bifenchlor (EPA Reg. No. 86363-11).

The registrant for the listed product is Kaizen Technologies, LLC., 2225 Q Street, Aurora, NE 68818.

III. Provisions for Disposition of Existing Stocks

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 cancelled or amended to terminate one or more registered uses. Since the tolerances for chlorpyrifos residues on food commodities have been reinstated by the Eighth Circuit, food bearing chlorpyrifos residues could be sold in interstate commerce. EPA has noted however, that it intends to issue a new rulemaking revoking several chlorpyrifos tolerances in the near future. In the meantime, the following amendment to the existing stocks provisions for the Kaizen product is consistent with the path forward for disposition of existing stocks for several other existing stocks amendment requests and post-tolerance-reinstatement voluntary cancellations for chlorpyrifos requested by registrants.

Existing stocks for the product identified in this order are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to August 31, 2022.

At this time, EPA is amending the existing stocks provisions in the August 31, 2022 cancellation order as they apply to the Kaizen chlorpyrifos product mentioned in this notice. EPA has determined that the following existing stocks provisions are not inconsistent with the purposes of FIFRA, given the limited amount of existing stocks and the limited time allowed for use of the existing stocks outlined below:

- Sale and distribution of existing stocks of Bifenchlor (EPA Reg. No. 86363-11) is permitted until April 30, 2025.
- Use of existing stocks of Bifenchlor (EPA Reg. No. 86363-11) must be consistent with the product labeling. Such use is permitted until June 30, 2025. Use of existing stocks of Bifenchlor (EPA Reg. No. 86363-11) for non-food purposes is permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

After these dates, all sale, distribution, and use of existing stocks is prohibited, except for sale and

distribution for export consistent with FIFRA section 17 (7 U.S.C. 136o) and for proper disposal.

Dated: September 10, 2024.

Jean Anne Overstreet,

*Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.*

[FR Doc. 2024–21004 Filed 9–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12171–01–OEJECR]

Notification of Request for Nominations to the National Environmental Justice Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations to the National Environmental Justice Advisory Council (NEJAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its National Environmental Justice Advisory Council (NEJAC). The NEJAC was chartered to provide advice regarding broad, cross-cutting issues related to environmental justice. This notice solicits nominations to fill approximately seven (7) new vacancies for terms through February 2026. To maintain the representation outlined by the charter, nominees will be selected to represent: academia, business and industry; community-based; non-governmental organizations; State and local governments; and Tribal governments and indigenous organizations. We are interested in adding members located in all EPA regions. Vacancies are anticipated to be filled by January 31, 2025. Sources in addition to this **Federal Register** Notice will be utilized in the solicitation of nominees.

DATES: Nominations should be submitted in time to arrive no later than Tuesday, October 15, 2024.

ADDRESSES: Submit nominations electronically with the subject line NEJAC Membership 2024 to nejac@epa.gov. The Office of Environmental Justice and External Civil Rights will acknowledge receipt of nominations.

FOR FURTHER INFORMATION CONTACT: Paula Flores Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: nejac@epa.gov; telephone: (214) 665–8123.

SUPPLEMENTARY INFORMATION: The NEJAC is a Federal advisory committee

chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the NEJAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues related to environmental justice. The NEJAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2) and related regulations. In accordance with Executive Order 14035, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its Federal advisory committees. EPA's Federal advisory committees have a workforce that reflects the diversity of the American people.

The Council consists of 32 members (including two Co-Chairpersons and one Vice-Chairpersons) appointed by EPA's Administrator. Members serve as non-Federal stakeholders who represent academia, business and industry; community-based organizations; non-governmental/environmental organizations; State and local governments; Tribal governments and indigenous organizations, of which one member serves as a liaison to the National Tribal Caucus. Members are appointed for one (1); two (2) or three (3)-year terms with the possibility of reappointment for another term.

The NEJAC usually convenes 4 to 6 times a year, generally meeting face-to-face twice (2) a year in the Spring and the Fall and virtually for the remaining meetings. Additionally, members will be asked to participate in work groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 20 to 25 hours per month, not including public meeting hours and with the expectation that the member will take part in two (2) or more workgroup activities. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

Nominations: Any interested person and/or organization may nominate qualified individuals for membership. Individuals are encouraged to self-nominate. The EPA values and welcomes opportunities to increase diversity, equity, inclusion and accessibility on its Federal advisory committees and is seeking to obtain nominations from all geographic locations of the United States of America. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the summary above. In addition, EPA is seeking nominees with knowledge in

environmental measures; public health/health disparities; water infrastructure and other water concerns; climate justice; farmworkers and pesticides; community sustainability and resiliency; air quality; youth perspectives; green jobs and green infrastructure; land use and equitable development; and emerging inclusion of sub-populations such as the unhoused individuals, veterans, individuals in the criminal justice system, etc. Other criteria used to evaluate nominees will include:

- the background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations,

- demonstrated experience with environmental justice and community sustainability issues at the national, State, or local level,

- excellent interpersonal and consensus-building skills,

- ability to volunteer time to attend meetings 4–6 times a year, participate in virtual and in-person meetings, volunteer time to take part in two (2) or more workgroup activities, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters; and

- willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees. The average workload for members is approximately 20 to 25 hours per month, not including public meeting hours and with the expectation that the member will take part in two (2) or more workgroup activities.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals are encouraged to self-nominate. Nominations will be submitted in electronic format following the template available at <https://www.epa.gov/environmentaljustice/nominations-nejac>. To be considered, all nominations should include:

- Current contact information for the nominee/applicant, including the nominee's/applicant's name, organization (and position within that organization), current business address, email address, telephone numbers and the stakeholder category position you are interested in.

- Brief statement describing the nominee's/applicant's interest in serving on the NEJAC.
- Résumé and a short biography describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees.
- Brief statements describing experience as it relates to engaging affected communities, understanding environmental justice/relevant issues, consensus building, communication skills and availability.
- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and knowledge will bring value to the work of the NEJAC.

Deeohn Ferris,

Director, Office of Policy, Partnerships, and Program Development, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024–20912 Filed 9–13–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petitions IV–2024–5; FRL–12205–01–R4]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Epic Alabama Maritime Assets, LLC, Alabama Shipyard, LLC (Mobile County, Alabama)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The EPA Administrator signed an order dated August 16, 2024, granting in part and denying in part the petition dated March 28, 2024, from Mobile Environmental Justice Action Coalition and Greater-Birmingham Alliance to Stop Pollution (GASP). The petition requested that EPA object to the Clean Air Act (CAA) title V operating permit issued by the Alabama Department of Environmental Management (ADEM) to Epic Alabama Maritime Assets, LLC, Alabama Shipyard, LLC (Alabama Shipyard) for its facility located in Mobile, Mobile County, Alabama.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, (404) 562–9115, hofmeister.art@epa.gov. The final order and petition are available at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

SUPPLEMENTARY INFORMATION: EPA received a petition from Mobile Environmental Justice Action Coalition and GASP dated March 28, 2024, requesting that EPA object to the issuance of operating permit no. 503–6001, issued by ADEM to Alabama Shipyard in Mobile, Mobile County, Alabama. On August 16, 2024, the EPA Administrator issued an order granting in part and denying in part the petition. The order itself explains the bases for EPA's decision. Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than November 15, 2024.

Dated: September 10, 2024.

Jeananne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–20925 Filed 9–13–24; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, September 19, 2024, 10:00 a.m.

PLACE: Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

Note: If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the meeting virtually, go to the commission's website www.fec.gov and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2024–09: U.S.

Representative Nanette Barragán and Barragán for Congress

Draft Advisory Opinion 2024–10:

Former U.S. Representative Alan Lowenthal and Alan Lowenthal for Congress

Draft Advisory Opinion 2024–12:

Shawn McCutcheon

REG 2024–01(Candidate Security)—

Draft Final Rule and Explanation and Justification

REG 2023–02 (Artificial Intelligence in Campaign Ads)—Draft Notice of Disposition

Draft Interpretive Rule Regarding 52

U.S.C. 30124 (Artificial Intelligence in Campaign Ads)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or secretary@fec.gov, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–21124 Filed 9–12–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–18]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: This will be a virtual meeting via Webex. Please visit the agency's homepage (www.asc.gov) and access the provided registration link in the News and Events section. You MUST register in advance to attend this Meeting.

Date: September 25, 2024.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Chair
Executive Director
Delegated State Compliance Reviews
Grants Director
Financial Manager
Notation Vote

Action and Discussion Items

Approval of Minutes—June 12, 2024
Quarterly Meeting Minutes
Policy on Monitoring and Reviewing the Appraisal Foundation
Fiscal Year 2025 ASC Budget Proposal

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the agency's homepage (www.asc.gov) and access the provided registration link in

the News and Events section. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2024–20960 Filed 9–13–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service; Performance Review Board

AGENCY: Federal Mine Safety and Health Review Commission

ACTION: Notice

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the Federal Mine Safety and Health Review Commission. The PRB reviews the performance appraisals of career and non-career senior executives. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: Applicable on September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Joshua Poole, Senior Management and Program Analyst, Federal Mine Safety and Health Review Commission, (202) 577–6831.

SUPPLEMENTARY INFORMATION: This Notice announces the appointment of the following primary and alternate members to the Federal Mine Safety and Health Review Commission PRB:

Primary Members:

Courtney Chung, Senior Vice President, Chief Management Officer, Export-Import Bank of the United States

Jebby Rasputnis, Deputy Director, Office of Programs, U.S. Railroad Retirement Board

James Tunnessen, Chief Information Officer, Information & Technology Management, National Endowment for the Arts

Alternate Members:

None.

Authority: 5 U.S.C. 4313(c)(4).

Joshua Poole,

Senior Management and Program Analyst, Federal Mine Safety and Health Review Commission.

[FR Doc. 2024–20913 Filed 9–13–24; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 1, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *JAG 2024 Exempt Trust and JAG 2024 Non-Exempt Trust, Calvin Thomas*

Gobbell, as trustee of both trusts, all of Clifton, Tennessee; to become a member of the Gobbell Family Control Group, a group acting in concert, to acquire voting shares of PB Bancshares, Inc., and thereby indirectly acquire voting shares of Peoples Bank, both of Clifton, Tennessee.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to KCAApplicationComments@kc.frb.org:

1. *Cameron J.W. Cooper, Greeley, Kansas; Carston D. Cooper, Lenexa, Kansas; Kelsey L. Cooper, Prairie Village, Kansas; and Katelin M. Shane, Louisburg, Kansas; to join the Cooper Family Group, a group acting in concert, to acquire additional voting shares of Garnett Bancshares, Inc., and thereby indirectly acquire additional voting shares of Patriots Bank, both of Garnett, Kansas.*

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–21012 Filed 9–13–24; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Board for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Board is to make written recommendations on each executive's annual summary ratings, performance-based pay adjustment, and performance awards to the appointing authority.

DATES: This notice is applicable on September 16, 2024.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S.C. 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial

summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Thomas Brandt, Jim Courtney, Kim Weaver, and Trevor Williams.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–21003 Filed 9–13–24; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: September 24, 2024 at 10 a.m. EDT.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 884 634 853 #; or via web: <https://www.frtib.gov/>.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the August 27, 2024, Board Meeting Minutes
2. Investment Manager Annual Service Review
3. Monthly Reports
 - (a) Participant Report
 - (b) Investment Report
 - (c) Legislative Report
4. Quarterly Reports
 - (d) Vendor Risk Management
5. Mid-Year Financial Review
6. Participant Satisfaction Survey

Closed Session

7. Information covered under 5 U.S.C. 552b (c)(9)(B) and (c)(10).

Authority: 5 U.S.C. 552b (e)(1).

Dated: September 11, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–20952 Filed 9–13–24; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Board of Scientific Counselors Infectious Diseases

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Board of Scientific Counselors Infectious Diseases (BSC ID). This virtual meeting is open to the public via Zoom, limited only by the number of web conference lines available (500 lines). Registration in advance is required by accessing the link below in the addresses section. Time will be available for public comment.

DATES: The meeting will be held on November 4 and 5, 2024, from 11 a.m. to 5 p.m., EST.

ADDRESSES: Zoom virtual meeting. Registration in advance is required by accessing the link at https://cdc.zoomgov.com/webinar/register/WN_fHWh_7peSgyUTYagidwsmg. Instructions to access the meeting will be provided following registration.

FOR FURTHER INFORMATION CONTACT:

Sarah Wiley, M.P.H., Senior Advisor, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–5, Atlanta, Georgia 30329–4027. Telephone: (404) 639–4840; Email: SWiley@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Board of Scientific Counselors Infectious Diseases (BSC ID) provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, Centers for Disease Control and Prevention (CDC); and the Directors of the National Center for Emerging and Zoonotic Infectious Diseases, the National Center for HIV, Viral Hepatitis, STD, and TB Prevention, the National Center for Immunization and Respiratory Diseases, and the Global Health Center, CDC, concerning strategies, goals, and priorities for the programs and research within the national centers and monitors the overall strategic direction and focus of CDC's infectious disease programs and centers.

Matters to be Considered: The agenda will include updates from and

discussions of programmatic priorities of CDC's national centers that address infectious diseases and will include reports from each of the Board's workgroups. Agenda items are subject to change as priorities dictate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–20944 Filed 9–13–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Sexual Risk Avoidance Education Program Performance Analysis Study—Extension (Office of Management and Budget (OMB) #0970–0536)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) and the Family and Youth Services Bureau in the Administration for Children and Families (ACF) request an extension without changes of a currently approved information collection activity as part of the Sexual Risk Avoidance Education (SRAE) Program Performance Analysis Study (PAS). The goal of the study is to collect, analyze, and report on performance measures data for the SRAE program (OMB Control No. 0970–0536; expiration date 1/31/2025). The purpose of the requested extension is to continue the ongoing data collection and submission of the performance measures by SRAE grant recipients.

DATES: *Comments due* November 15, 2024. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects

of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purpose of the SRAE program is to educate youth on how to voluntarily refrain from nonmarital sexual activity and prevent other youth risk behaviors. Data will continue to be used to determine if the SRAE grant recipients are meeting performance benchmarks related to their program's mission and priorities.

The SRAE PAS collects performance measures data from SRAE grant recipients, program providers, and participants. The data include information on program structure, cost, and support for implementation;

program attendance, reach, and dosage; the characteristics of youth involved in programming; youth sexual and other risky behavior prior to program participation; and youth sexual and other risky behavior intentions at program exit. The performance measures help the ACF program office and grant recipients to monitor and report on progress in implementing SRAE programs and inform technical assistance.

Some of the performance measures data come from youth participants through surveys SRAE grant recipients administer at program entry and exit. There are separate versions of the entry and exit surveys for middle school youth, which exclude some of the more sensitive items that are included in the versions for high school and older youth. There is also a shorter version of the entry survey for programs conducting impact studies, to reduce

the burden on participants in those programs who are likely responding to other surveys as part of their impact study. Although there was a version of the exit survey for programs conducting impact studies in the past, it was removed through the previous OMB request, and youth in these programs now complete the same version of the exit survey as other youth.

ACF is currently working on future revisions to this information collection, which will be submitted to OMB for review and approval in 2025. Notices inviting public comment on those revisions will accompany that request, but comments received in response to this notice could also inform those revisions.

Respondents: General Departmental (GDSRAE), State (SSRAE), and Competitive (CSRAE) grant recipients, their subrecipients, and program participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/ annual burden (in hours)
(1) Participant Entry Survey:				
GDSRAE participants	126,130	1	0.1333	16,813
SSRAE participants	317,633	1	0.1333	42,340
CSRAE participants	20,136	1	0.1333	2,684
(2) Participant Exit Survey:				
GDSRAE participants	100,904	1	0.1667	16,821
SSRAE participants	254,106	1	0.1667	42,360
CSRAE participants	16,109	1	0.1667	2,685
(3) Performance reporting data entry form: grant recipients:				
GDSRAE grant recipients	119	2	16	3,808
SSRAE grant recipients	39	2	16	1,248
CSRAE grant recipients	34	2	16	1,088
(4) Performance reporting data entry form: subrecipients:				
GDSRAE subrecipients	252	2	13	6,552
SSRAE subrecipients	426	2	13	11,076
CSRAE subrecipients	63	2	13	1,638

Estimated Total Annual Burden Hours: 149,113.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C 1310.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-20953 Filed 9-13-24; 8:45 am]

BILLING CODE 4184-73-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2023-E-3224, FDA-2023-E-3225, FDA-2023-E-3221, and FDA-2023-E-3223]

Determination of Regulatory Review Period for Purposes of Patent Extension; ORSERDU

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ORSERDU and is publishing this

notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by November 15, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 17, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 15, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA-2023-E-3224, FDA-2023-E-3225, FDA-2023-E-3221, and FDA-2023-E-3223 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ORSERDU.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ORSERDU (elacestrant dihydrochloride). ORSERDU is indicated for treatment of postmenopausal women or adult men, with ER-positive, HER2-negative, ESR1-mutated advanced or metastatic breast

cancer with disease progression following at least one line of endocrine therapy. Subsequent to this approval, the USPTO received patent term restoration applications for ORSERDU (U.S. Patent Nos. 7,612,114 and 8,399,520 filed by Eisai R&D Management Co., Ltd., and U.S. Patent Nos. 10,071,066 and 10,420,734, filed by Duke University), and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ORSERDU represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ORSERDU is 2,965 days. Of this time, 2,740 days occurred during the testing phase of the regulatory review period, while 225 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 17, 2014. FDA has verified the applicants' claims that the date the investigational new drug application became effective was on December 17, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 17, 2022. FDA has verified the applicants' claims that the new drug application (NDA) for ORSERDU (NDA 217639) was initially submitted on June 17, 2022.

3. *The date the application was approved:* January 27, 2023. FDA has verified the applicants' claims that NDA 217639 was approved on January 27, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In the applications for patent extension, the applicants seek 724 days, 841 days, or 1,595 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask

for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20893 Filed 9–13–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1216]

Electronic Common Technical Document; Data Standards; Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research Supporting Electronic Common Technical Document Version 4.0

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research are announcing support for Electronic Common Technical Document (eCTD) Version 4.0 (v4.0)-based electronic submissions.

DATES: Support for eCTDv4.0 electronic submissions begins September 16, 2024. FDA will also continue to support eCTDv3.2.2 electronic submissions. Submit either electronic or written comments at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instruction."

Instructions: All submissions received must include the Docket No. FDA–2018–D–1216 for "Electronic Common Technical Document; Data Standards; Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research Supporting Electronic Common Technical Document Version 4.0." 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.

FOR FURTHER INFORMATION CONTACT: Jonathan Resnick, Center for Drug Evaluation and Research, Food and Drug Administration, Jonathan.Resnick@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION: According to the guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications" (available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-regulatory-submissions-electronic-format-certain-human-pharmaceutical-product-applications>), submissions subject to section 745A(a) of the Federal Food,

Drug, and Cosmetic Act (21 U.S.C. 379k-1(a)) must be submitted in eCTD format using the version of eCTD currently supported by FDA unless such submission is exempt from the electronic submission requirements or if FDA has granted a waiver. The version of eCTD currently supported by FDA is specified in the FDA Data Standards Catalog (available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/data-standards-catalog>). FDA plans to update the FDA Data Standards Catalog to add eCTDv4.0 upon publication of this notice. FDA will support both eCTDv3.2.2 and eCTDv4.0 submissions before eventually only supporting eCTDv4.0 submissions. FDA will provide advance notice of when the Agency will begin supporting electronic submission only in eCTDv4.0. Specifications for eCTDv3.2.2 and v4.0 are available on FDA's eCTD web page (available at: <https://www.fda.gov/drugs/electronic-regulatory-submission-and-review/electronic-common-technical-document-ectd>).

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-20897 Filed 9-13-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2023-E-3240, FDA-2023-E-3259, and FDA-2023-E-3260]

Determination of Regulatory Review Period for Purposes of Patent Extension; REZZAYO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for REZZAYO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a

redetermination by November 15, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 17, 2025. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 15, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2023–E–3240, FDA–2023–E–3259, and FDA–2023–E–3260 for “Determination of Regulatory Review Period for Purposes of Patent Extension; REZZAYO.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51,

Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, REZZAYO (rezafungin acetate) indicated in patients 18 years of age or older who have limited or no alternative options for the treatment of candidemia and invasive candidiasis. Subsequent to this approval, the USPTO received patent term restoration applications for REZZAYO (U.S. Patent Nos. 8,722,619; 9,526,835; and 10,702,573) from Cidara Therapeutics, Inc., and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of REZZAYO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO

requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for REZZAYO is 2,814 days. Of this time, 2,570 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 10, 2015. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on July 10, 2015.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 22, 2022. FDA has verified the applicant’s claim that the new drug application (NDA) for REZZAYO (NDA 217417) was initially submitted on July 22, 2022.

3. *The date the application was approved:* March 22, 2023. FDA has verified the applicant’s claim that NDA 217417 was approved on March 22, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 607 days, 1,261 days, or 1,529 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.)

Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-20894 Filed 9-13-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK T1D Review.
Date: October 31, 2024.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Rm 7351. (Bethesda, MD 20892, 301-594-8886, sanoviche@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20957 Filed 9-13-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Grants Review Committee.

Date: October 24-25, 2024.

Time: 9:00 a.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852 (Hybrid Meeting).

Contact Person: Aiwu Cheng, Ph.D., Scientific Review Officer, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20982, (301) 594-4859, email: aiwu.cheng@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20916 Filed 9-13-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Review.

Date: October 29, 2024.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Rm. 7351, Bethesda, MD 20892, 301-594-8886, sanoviche@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20958 Filed 9-13-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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: National Institute on Drug Abuse Special Emphasis Panel; Ex Vivo Models for Studies at the Intersection of HIV and Poly-Substance Use.

Date: October 22, 2024.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-4471, ramadanir@mail.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploratory Studies to Investigate Mechanisms of HIV Infection, Replication, Latency, and/or Pathogenesis in the Context of Substance Use Disorders.

Date: November 7, 2024.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 594-9460, Soyoun.cho@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 10, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20917 Filed 9-13-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Multi-Scale analysis of AD/DR.

Date: October 21–22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Ln, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 5601 Fishers Lane, Rm 2W200, Rockville, MD 20852, (301) 496-9667, prasadnb@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-20955 Filed 9-13-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Biennial Progress Report: 2022–2023; Availability of Report

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces availability of the

Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Biennial Progress Report: 2022–2023.

ADDRESSES: The report is available at <https://ntp.niehs.nih.gov/go/2023iccvamreport>.

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Kleinstreuer, Director, National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), email: nicole.kleinstreuer@nih.gov, telephone: 984-287-3150.

SUPPLEMENTARY INFORMATION:

Background: The ICCVAM Authorization Act of 2000 established ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences (NIEHS) under NICEATM. ICCVAM's mission is to facilitate development, validation, and regulatory acceptance of new and revised regulatory test methods that reduce, refine, or replace the use of animals in testing while maintaining and promoting scientific quality and the protection of human health, animal health, and the environment.

A provision of the ICCVAM Authorization Act states that ICCVAM shall prepare "reports to be made available to the public on its progress under this Act." The twelfth progress report describing ICCVAM activities and accomplishments from January 2022 through December 2023 is now available.

Summary of Report Contents: Key ICCVAM, ICCVAM agency, and NICEATM accomplishments summarized in the report include:

- Development of an updated document on "Validation, Qualification, and Regulatory Acceptance of New Approach Methodologies," by the ICCVAM Validation Workgroup. This document describes an approach to validation of new approach methodologies (NAMs) that reflects modern toxicity testing, placing less emphasis on replacement of in vivo tests with a single alternative method and more emphasis on integrating results from multiple in vitro and in chemico assays and in silico approaches.

- Publication of articles describing U.S. and international information needs and testing requirements for nanomaterials, ecotoxicity, and acute systemic toxicity. An ICCVAM workgroup also published an award-winning article describing federal agency application of in vitro to in vivo extrapolation.

- Curation and publication of a human skin sensitization database.

ICCVAM agencies and NICEATM collaborated with the German Federal Institute of Risk Assessment to compile the largest existing database of human reference data for skin sensitization.

- Broadening applicability of defined approaches for skin sensitization. Following international acceptance of defined approaches to skin sensitization, ICCVAM agency scientists evaluated use of defined approaches to characterizing sensitization potential of agrochemical formulations and isothiazolinones, a type of preservative used in consumer products.

- Establishment of an ICCVAM workgroup to provide expertise in identifying and evaluating NAMs to predict toxicity of per- and polyfluoroalkyl substances (PFAS).

- Development, updates, and training on web tools and data resources for chemical exploration and toxicity prediction. The report describes tools provided by NIEHS, the U.S. Environmental Protection Agency, and others, as well as training that has been provided to support their use.

Availability of Report: The report is available at <https://ntp.niehs.nih.gov/go/2023iccvamreport>. Links to this report and all past ICCVAM annual and biennial reports are available at <http://ntp.niehs.nih.gov/go/iccvam-bien>.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 18 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability. ICCVAM also promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at <https://ntp.niehs.nih.gov/go/iccvam>.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM

work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at <https://ntp.niehs.nih.gov/go/niceatm>.

Dated: September 10, 2024.

Richard P. Woychik,

Director, National Institute of Environmental Health Sciences and National Toxicology Program, National Institutes of Health.

[FR Doc. 2024–20970 Filed 9–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Infrastructure Development for Interdisciplinary Aging Research.

Date: November 18, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lisa-Marie Tisdale Rowell, Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 5601 Fishers Lane, Rm. 1007G, Rockville, MD 20892, (301) 594–5622, wigfallt@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20950 Filed 9–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Alzheimer's Microbiome.

Date: October 10, 2024.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Dario Dieguez, Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 5601 Fishers Lane Rockville, MD 20852, (301) 827–3101, dario.dieguez@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20951 Filed 9–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Alzheimer's Disease Research Centers.

Date: October 21–22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, M.D., Ph.D., Scientific Review Officer, National Institute of Aging, National Institute of Health, 5601 Fishers Lane, Rm. 2C218, Rockville, MD 20892, 301–496–9374, grimaldim2@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20949 Filed 9–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—B.

Date: October 17–18, 2024.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037 (In-Person and Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, Maryland 20892, 301–594–4859, latarsha.carithers@nih.gov.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Study Section—A.

Date: November 7–8, 2024.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037 (In-Person and Virtual Meeting).

Contact Person: Adam Lawrence Heuberger, Ph.D., Scientific Review Officer, Office of Scientific Review National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301–480–4151, adam.heuberger@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 10, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20956 Filed 9–13–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6418–N–04]

Announcement of Funding Awards

AGENCY: Office of Chief Financial Officer, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Opportunity (NOFOs) and Notices for the following program (s): Procedural Guidance for Fiscal Year 2023 HOPWA Permanent Supportive Housing Renewal and Replacement Grant Application, FY 2022 Family Unification Program (FUP), FY 2023 Housing Mobility-Related Services, FY 2023 HUD VASH PIH Notice 2023–22, FY 2023 HUD VASH PIH Notice 2023–09, FY 2023 Choice

Neighborhoods Planning Grants, FY 2023 Emergencies and Non-Presidentially Declared Disaster Fund PIH Notice 2012–48(HA), FY 2023 HOPE VI Main Street Grant Program, FY22 and FY23 Distressed Cities Technical Assistance (DCTA) Program, FY22 HUDRD—Hispanic Serving Institutions (HSI) Research Center of Excellence, FY2022 Authority to Accept Unsolicited Proposals for Research Partnerships, FY2023 HUDRD-Closing the Homeownership Gap and Preserving Homeownership During Economic Decline, FY23 HUDRD Grants for University-Nonprofit Partnerships Supporting Community-Engaged Research Designed to Address Homelessness Program, FY2023 and FY2024 Radon Testing and Mitigation Demonstration for Public Housing and Healthy Homes Production Grant Program.

FOR FURTHER INFORMATION CONTACT:

Christine Brown, Acting Director, Grants Management and Oversight, Office of the Chief Financial Officer, Office of the Chief Financial Officer (Systems), Grants Management and Oversight at AskGMO@hud.gov or the contact person listed in each appendix.

SUPPLEMENTARY INFORMATION: HUD posted Procedural Guidance for Fiscal Year 2023 HOPWA Permanent Supportive Housing Renewal and Replacement Grant Application Program on [grants.gov](https://www.grants.gov) April 12, 2023, (CPD–23–03). The competition closed on June 13, 2023. HUD rated and selected for funding based on selection criteria contained in the notice. This competition awarded \$30,289,401 to 27 recipients to provide funds to eligible expiring HOPWA Permanent Supportive Housing grantees to provide permanent supportive housing (PSH) as the primary grant activity to HOPWA-eligible clients. For the purposes of the Notice, “permanent housing” means housing in which the eligible person has a continuous legal right to remain in the unit established by a lease or legally binding occupancy agreement.

HUD posted FY 2022 Family Unification Program (FUP) on [grants.gov](https://www.grants.gov) April 25, 2023, (FR–6600–N–84). The competition closed on May 25, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$9,968,902 to 13 recipients to make Housing Choice Voucher (HCV) assistance available to Public Housing Agencies (PHAs) in partnership with Public Child Welfare Agencies (PCWAs) for eligible families and youth.

HUD posted FY 2023 FY 2023 Housing Mobility-Related Services

Program on *grants.gov* June 1, 2023, (FR-6700-N-87). The competition closed on September 13, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$24,510,137 to 7 recipients to expand housing choices for Housing Choice Voucher (HCV) families with children by increasing access to opportunity neighborhoods. The awardees will administer housing mobility programs which will increase the number of HCV families with children residing in lower-poverty neighborhoods.

HUD posted FY 2023 HUD VASH Program on *grants.gov* August 14, 2023, (PIH Notice 2023-22). The Registration of Interest application window closed on September 15, 2023. HUD selected PHAs for funding based on selection criteria contained in the notice. This process awarded \$14,554,810 to 67 recipients to assist homeless veterans with housing assistance. The PHAs will provide a HUD-VASH voucher to an eligible veteran referred by a partnering VA Medical Center.

HUD posted FY 2023 HUD VASH Program on *grants.gov* April 10, 2023, (PIH Notice 2023-09). The Registration of Interest application window closed on June 5, 2023. HUD selected PHAs for funding based on selection criteria contained in the notice. This process awarded \$16,126,622 to 71 recipients to assist homeless veterans with housing assistance. The PHAs will provide a HUD-VASH voucher to an eligible veteran referred by a partnering VA Medical Center.

HUD posted FY 2023 Choice Neighborhoods Planning Grants NOFO on *grants.gov* April 4, 2023, (FR-6700-N-38). The competition closed on June 6, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$7,000,000 to 14 recipients focused on severely distressed public housing and HUD-assisted housing. Planning Grants support communities in developing a comprehensive neighborhood revitalization strategy, or Transformation Plan. The Transformation Plan will become the guiding document for the revitalization of the public and/or assisted housing units while simultaneously directing the transformation of the surrounding neighborhood and positive outcomes for families.

HUD posted FY 2023 Emergencies and Non-Presidentially Declared Disaster Fund PIH Notice 2012-48(HA) on *grants.gov* November 28, 2012, (PIH 2012-48(HA)) on an as-needed basis. HUD rated and selected for funding

based on selection criteria contained in the Notice. This competition awarded \$7,039,081 to 8 recipients from July 1, 2023, to August 31, 2023, to assist public housing agencies with capital needs arising from emergencies and non-presidentially declared natural disasters. The funds are to be used to correct emergency conditions, which constitute an immediate threat to the health and safety of public housing residents.

HUD posted FY 2023 HOPE VI Main Street Grant Program on *grants.gov* June 14, 2023, (FR-6700-N-03). The competition closed on December 11, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$2,000,000 to 3 recipients to communities smaller than 50,000 in population to assist in the renovation of a historic, traditional central business district, or "Main Street" area by replacing unused, obsolete, commercial space in buildings with affordable housing units.

HUD posted FY22 and FY23 Distressed Cities Technical Assistance (DCTA) Program on *grants.gov* March 20, 2023, (FR-6700-N-54). The competition closed on May 19, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$6,950,000 to 5 recipients to provide technical assistance to units of general local government and their non-profit partners serving communities experiencing economic hardship.

HUD posted HUDRD—Hispanic Serving Institutions (HSI) Research Center of Excellence Program on *grants.gov* January 17, 2023, (FR-6600-N-29G). The competition closed on June 1, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$10,500,000 to 4 recipients to conduct research projects on multiple topics of strategic interest to the Department of Housing and Urban Development.

HUD posted FY2022 Authority to Accept Unsolicited Proposals for Research Partnerships Program on *grants.gov* September 7, 2022, (FR-6600-N-USP). The notice closed on June 30, 2023, 2023. HUD rated and selected for funding based on selection criteria contained in the NOTICE. This Notice awarded \$1,600,000 to 3 recipients to allow greater flexibility in addressing evidence gaps concerning strategic policy questions and to better utilize external expertise in evaluating effectiveness of programs affecting residents of urban, suburban, rural, and

tribal areas as well as local innovations in the delivery of these programs.

HUD posted FY2023 HUDRD-Closing the Homeownership Gap and Preserving Homeownership During Economic Decline Program on *grants.gov* May 25, 2023 (FR-6700-N-29I). The competition closed on July 24, 2023, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$998,283 to 3 recipients to fund rigorous evaluations of (a) the factors that contribute to the gaps in homeownership rates among different demographic groups, and the effect of public policies and other initiatives (including private or philanthropic efforts) on addressing these gaps, and (b) how homeownership can be preserved during economic decline, including the effects of related public policies and other initiatives (including private or philanthropic efforts on achieving preservation goals).

HUD posted FY23 HUDRD Grants for University-Nonprofit Partnerships Supporting Community-Engaged Research Designed to Address Homelessness Program on *grants.gov* May 4, 2023 (FR-6700-N-29K). The competition closed on July 13, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$1,358,208 to 2 recipients to address homelessness in communities, while elevating the perspectives and insights of people with lived experience.

HUD posted FY2023 and FY2024 Radon Testing and Mitigation Demonstration for Public Housing Program on *grants.gov* July 7, 2023, (FR-6700-N-80). The competition closed on August 21, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$3,047,932 to 6 recipients to provide funds to public housing agencies (PHAs) to conduct testing and as-needed mitigation of radon in the units that they manage and where applicable, to support the development of a plan for future testing and mitigation.

HUD posted FY 2023 Healthy Homes Production Grant Program on *grants.gov* September 15, 2023, (FR-6700-N-44). The competition closed on November 7, 2023. HUD rated and selected for funding based on selection criteria contained in the NOFO. This competition awarded \$39,080,629 to 22 recipients to address multiple housing-related hazards in a comprehensive fashion.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development

Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the

amounts of the awards in Appendix A thru O of this document.

Christine Brown,

Acting Director, Grants Management and Oversight, Office of the Chief Financial Officer.

Appendix A

Procedural Guidance for Fiscal Year 2023 HOPWA Permanent Supportive Housing Renewal and Replacement Grant Application (CPD-23-03)

Contact: Vanessa Larkin, vanessa.t.larkin@hud.gov.

Organization name	Street address or P.O. Box	City	State	Zip	Award amount
Action, Inc	180 Main Street	Gloucester	MA	01930-6002	\$1,300,585.00
AIDS Alabama, Inc	3529 7th Avenue South	Birmingham	AL	35222-3210	987,317.00
AIDS Foundation of Chicago	200 W Monroe Street Suite 1150 ...	Chicago	IL	60606-5036	1,483,450.00
AIDS Foundation of Chicago	201 W Monroe Street Suite 1150 ...	Chicago	IL	60606-5036	1,422,571.00
Alameda County	224 W Winton Ave Room 108	Hayward	CA	94544	1,561,072.00
Alaska Housing Finance Corp	P.O. Box 101020 4300 Boniface Parkway.	Anchorage	AK	99510-1020	924,965.00
City of Nashua	229 Main Street	Nashua	NH	03060-2938	1,532,092.00
City of Savannah, Daniel Flagg	P.O. Box 1027	Savannah	GA	31402	261,995.00
City of Savannah, Project House	P.O. Box 1027	Savannah	GA	31402	692,757.00
Clare Housing	929 Central Avenue NE	Minneapolis	MN	55413-2404	994,072.00
Clare Housing	929 Central Avenue NE	Minneapolis	MN	55413-2404	431,806.00
Cochise County	1415 Melody Lane Building G	Bisbee	AZ	85603	643,013.00
Del Norte Neighborhood Dev	3275 W 14th Avenue Suite #202 ...	Denver	CO	80204	627,772.00
Grace House	2219 N Lamar Street	Jackson	MS	39202-1404	1,266,240.00
Harbor Homes	77 Northeastern Blvd	Nashua	NH	03060-2938	512,470.00
Health Services Center	P.O. Box 1347	Anniston	AL	36202	915,881.00
Kingsport Housing and Redevelopment	906 E Sevier Avenue	Kingsport	TN	37660-5233	1,133,529.00
Lexington-Fayette Urban County	200 East Main Street	Lexington	KY	40504	1,506,791.00
Maui AIDS Foundation	1935 Main Street Suite 100	Wailuku	HI	96793-1784	1,520,103.00
Meeting the Needs of Our Community	4A Kronprindsens Gade P.O. Box 306816.	St. Thomas	VI	00803-6816	1,510,082.00
Oregon Health Authority	800 NE Oregon St Suite 105	Portland	OR	97232	1,453,052.00
Pima County	2797 East Ajo Way	Tucson	AZ	85713	1,425,283.00
State of Montana	1400 Carter Dr	Helena	MT	59601	1,512,514.00
University of Illinois, College of Medicine	809 S Marshfield Ave	Chicago	IL	60612-4305	1,311,404.00
Salvation Army	2445 Prior Avenue	Roseville	MN	55113-2714	473,084.00
Vermont Housing	58 East State Street	Montpelier	VT	05602-3403	1,497,540.00
Vivent	648 N Plankinton Ave. Suite 200 ...	Milwaukee	WI	53203	1,387,961.00
Total .....	.....	.....	.....	.....	30,289,401.00

Appendix B

FY 2022 Family Unification Program (FUP) FR-6600-N-84

Contact: Celia Carpentier (202) 402-7093 and Ryan Jones (202) 402-2677.

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount
Santa Clara County Housing Authority	505 West Julian Street	San Jose	CA	95110	\$1,175,590.00
Sonoma County Housing Authority	1440 Guerneville Road	Santa Rosa	CA	95403	1,182,229.00
Housing Authority of the County of San Diego	3989 Ruffin Road	San Diego	CA	92123	1,131,976.00
Housing Authority of the City and County of Denver ...	1035 Osage Street	Denver	CO	80204	862,761.00
Hialeah Housing Authority	75 East 6th Street	Hialeah	FL	33010	566,650.00
Chicago Housing Authority	60 E Van Buren St	Chicago	IL	60605	778,477.00
Jefferson Parish Housing Services and Development District.	P.O. Box 9	Gretna	LA	70054	417,064.00
Mississippi Regional Housing Authority VIII	P.O. Box 2347	Gulfport	MS	39505	376,940.00
Home Forward	135 SW Ash Street	Portland	OR	97204	788,081.00
Rhode Island Housing and Mortgage Finance Corporation.	44 Washington Street	Providence	RI	02903	354,369.00
Housing Authority of the City of Austin	P.O. Box 41119	Austin	TX	78704	772,020.00
Housing Authority of the County of Salt Lake dba Housing Connect.	3595 S Main Street	Salt Lake City	UT	84115	628,548.00
King County Housing Authority	600 Andover Park West	Seattle	WA	98188	934,197.00
Total .....	.....	.....	.....	.....	9,968,902.00

Appendix C

FY 2023 Housing Mobility-Related Services
(FR-6700-N-84)

Contact: Alison Bell (202) 402-5673.

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount and total
Housing Authority of the Birmingham District	1826 3rd Avenue S	Birmingham	AL	35233	\$2,119,900
Boston Housing Authority	52 Chauncy Street	Boston	MA	02111	5,000,000
The Housing Authority of the City of Dallas, TX	3939 N Hampton Road	Dallas	TX	75212	5,000,000
Houston Housing Authority	2640 Fountain View Drive	Houston	TX	77057	5,000,000
Seattle Housing Authority	190 Queen Anne Avenue North	Seattle	WA	98109	1,075,200
Milwaukee County Housing Authority	600 W Walnut Street	Milwaukee	WI	53212	1,815,037
Connecticut Department of Housing	505 Hudson Street	Hartford	CT	06106	4,500,000
Total .....	.....	.....	.....	.....	24,510,137

Appendix D

FY 2023 HUD VASH PIH Notice 2023-22

Contact: Courtney Herring, 202-402-5000.

Organization name	Street address	City	State	Zip code	Award amount
Housing Authority of the Birmingham District	1826 3rd Ave S	Birmingham	AL	35233	\$180,378.00
Huntsville Housing Authority	200 Washington St NE	Huntsville	AL	35801	200,323.00
Bessemer Housing Authority	1515 Fairfax Ave	Bessemer	AL	35020	198,979.00
City of Tucson	310 N Commerce Park Loop	Tucson	AZ	85745	602,505.00
Tempe Housing Authority	3500 S Rural Rd	Tempe	AZ	85282	226,306.00
Housing Authority of Cochise County	1415 Melody Ln Bldg. A	Bisbee	AZ	85603	66,533.00
Housing Authority of the County of Contra Costa	3133 Estudillo St	Martinez	CA	94553	892,320.00
Housing Authority of the County of San Mateo	264 Harbor Blvd	Belmont	CA	94002	693,742.00
Housing Authority County of San Joaquin	2575 Grand Canal Blvd	Stockton	CA	95207	80,008.00
Stanislaus Regional Housing Authority	1701 Robertson Rd	Modesto	CA	95351	158,023.00
San Diego Housing Commission	1122 Broadway Ste 300	San Diego	CA	92101	894,210.00
Housing Authority of the City of San Luis Obispo	487 Leff St	San Luis Obispo	CA	93401	223,346.00
City of Fairfield Housing Authority	823 Jefferson St Ste B	Fairfield	CA	94533	264,948.00
Alameda County Housing Authority	22941 Atherton St	Hayward	CA	94541	403,437.00
Housing Authority of the County of Santa Cruz	2160 41st Ave	Capitola	CA	95010	573,559.00
Housing Authority of the City of Redding	777 Cypress Ave	Redding	CA	96001	56,496.00
Housing Authority of the County of San Diego	3989 Ruffin Rd	San Diego	CA	92123	91,360.00
Roseville Housing Authority	316 Vernon St Ste 150	Roseville	CA	95678	165,182.00
Housing Catalyst	1715 W Mountain Ave	Fort Collins	CO	80521	272,829.00
Metro West Housing Solutions	575 Union Blvd Ste 100	Lakewood	CO	80228	293,659.00
Housing Authority of the City of Bridgeport	150 Highland Ave	Bridgeport	CT	6604	125,118.00
West Haven Housing dba Savin Rock Communities	15 Glade St	West Haven	CT	6516	108,738.00
Connecticut Department of Housing	505 Hudson St	Hartford	CT	6106	266,357.00
Lakeland Housing Authority	430 Hartsell Ave	Lakeland	FL	33815	43,235.00
Hernando County Housing Authority	621 W Jefferson St	Brooksville	FL	34601	49,218.00
DuPage Housing Authority	711 E Roosevelt Rd	Wheaton	IL	60187	331,517.00
The City of Evansville Housing Authority	500 SE 10th St	Evansville	IN	47713	143,255.00
Boston Housing Authority	52 Chauncy St	Boston	MA	2111	253,129.00
Cambridge Housing Authority	362 Green St	Cambridge	MA	2139	91,099.00
Brockton Housing Authority	45 Goddard Rd	Brockton	MA	2301	48,682.00
Somerville Housing Authority	30 Memorial Rd	Somerville	MA	2145	195,653.00
Brookline Housing Authority	90 Longwood Ave	Brookline	MA	2446	118,639.00
Dedham Housing Authority	163 Dedham Blvd	Dedham	MA	2026	183,711.00
Watertown Housing Authority	55 Waverley Ave	Watertown	MA	2472	198,280.00
Executive Office of Housing and Livable Communities	100 Cambridge St Ste 300	Boston	MA	2114	68,808.00
Housing Opportunities Commission of Montgomery County, MD	10400 Detrick Ave	Kensington	MD	20895	317,182.00
Grand Rapids Housing Commission	1420 Fuller Ave SE	Grand Rapids	MI	49507	115,974.00
Kent County Housing Commission	121 S Martin L King Blvd	Grand Rapids	MI	49503	131,583.00
Housing Authority of the City of Lumberton	407 N Sycamore St	Lumberton	NC	28358	21,922.00
The Housing Authority of the City of Rocky Mount	1065 Pinehurst Dr	Rocky Mount	NC	27801	62,998.00
Sanford Housing Authority	1000 Carthage St	Sanford	NC	27330	64,938.00
Long Branch Housing Authority City of Long Branch	2 Hope Lane	Long Branch	NJ	7740	63,350.00
New Jersey Department of Community Affairs	101 S Broad St	Trenton	NJ	8608	54,266.00
New Jersey Department of Community Affairs	101 S Broad St	Trenton	NJ	8608	54,266.00
Nevada Rural Housing Authority	3695 Desatoya Dr	Carson City	NV	89701	403,272.00
Akron Metropolitan Housing Authority	100 W Cedar St	Akron	OH	44307	105,118.00
Stark Metropolitan Housing Authority	400 Tuscarawas St E	Canton	OH	44702	160,834.00
Housing Authority of Washington County	161 NW Adams Ave	Hillsboro	OR	97124	301,998.00
Philadelphia Housing Authority	2013 Ridge Ave	Philadelphia	PA	19121	746,196.00
Harrisburg Housing Authority	351 Chestnut St	Harrisburg	PA	17101	270,043.00
The Housing Authority of the County of Butler	114 Woody Dr	Butler	PA	16001	60,455.00
Mercer County Housing Authority	80 Jefferson Ave	Sharon	PA	16146	26,816.00
Housing Authority of the City of York	31 S Broad St	York	PA	17403	81,320.00
Housing Authority of Chester County	30 W Barnard St	West Chester	PA	19382	402,514.00
North Providence Housing Authority	945 Charles St	North Providence	RI	2904	248,877.00
Rhode Island Housing and Mortgage Finance Corporation	44 Washington St	Providence	RI	2903	337,554.00

Organization name	Street address	City	State	Zip code	Award amount
SC State Housing Finance & Development Authority ..	300 Outlet Pointe Blvd Ste C	Columbia	SC	29210	42,231.00
Housing Authority of the City of Dallas, Texas (DHA) ..	3939 N Hampton Rd	Dallas	TX	75212	177,199.00
San Marcos Housing Authority	1201 Thorpe Ln	San Marcos	TX	78666	73,650.00
Tatum Housing Authority	200 Forest Acres Cir	Tatum	TX	75691	31,708.00
Housing Authority of the City of New Braunfels	300 Laurel Ln	New Braunfels	TX	78130	45,393.00
City of Marshall Housing Authority	1401 Poplar St	Marshall	TX	75670	33,730.00
Lynchburg Redevelopment and Housing Authority	1948 Thomson Dr	Lynchburg	VA	24501	72,233.00
Staunton Redevelopment and Housing Authority	900 Elizabeth Miller Gdns	Staunton	VA	24401	36,303.00
Seattle Housing Authority	190 Queen Anne Ave N	Seattle	WA	98109	285,099.00
Spokane Housing Authority	25 W Nora Ave	Spokane	WA	99205	934,728.00
Wisconsin Housing and Economic Development Au- thority.	201 W Washington Ave Ste 700	Madison	WI	53703	27,478.00
Total .....	.....	.....	.....	.....	14,554,810.00

Appendix E

FY 2023 HUD VASH PIH Notice 2023-09

Contact: Courtney Herring, 202-402-5000.

Organization name	Street address or P.O. Box	City	Zip code	Award amount
Alaska Housing Finance Corporation	4300 Boniface Parkway	Anchorage	99504	\$155,376.00
Housing Authority of the City of Dothan	602 S Lena Street	Dothan	36301	141,216.00
Housing Authority of the County Contra Costa	3133 Estudillo Street	Martinez	94553	2,107,886.00
Housing Authority of the County of San Bernardino	715 E Brier Dr	San Bernardino	92408	753,434.00
Housing Authority of the City of Needles	908 Sycamore Drive	Needles	92363	211,572.00
San Diego Housing Commission	1122 Broadway Suite 300	San Diego	92101	422,061.00
Orange County Housing Authority	1501 E St. Andrew Place, First Floor ..	Santa Ana	92705	168,348.00
Housing Authority of the City of Redondo Beach	1922 Artesia Blvd	Redondo Beach	90278	186,386.00
City of Anaheim Housing Authority	201 South Anaheim Boulevard	Anaheim	92805	155,461.00
Delta Housing Authority	501 14TH Street	Delta	81416	30,239.00
Boulder County Housing Authority	3460 N Broadway	Boulder	80304	44,282.00
Boulder County Housing Authority	3460 N Broadway	Boulder	80304	38,362.00
Montrose County Housing Authority	222 Hap Court	Olathe	81425	32,422.00
Colorado Division of Housing	1313 Sherman Street	Denver	80203	271,779.00
New Castle County Housing Authority	77 Read's Way	New Castle	19720	680,918.00
Sarasota Housing Authority	269 S Osprey Ave	Sarasota	34236	1,262,250.00
Delray Beach Housing Authority	82 NW 5th Avenue	Delray Beach	33444	68,836.00
Citrus County Housing Services	2804 W Marc Knighton Ct	Lecanto	34461	29,824.00
County of Hawaii	1990 Kino'ole St., Suite 102	Hilo	96720	95,116.00
County of Maui	2065 Main Street	Wailuku	96793	157,760.00
Hawaii Public Housing Authority	1002 North School Street	Honolulu	96817	111,455.00
City of Sioux City Housing Authority	405 6th St.—#107	Sioux City	51101	24,593.00
Housing Authority of the City of Bloomington, IL	104 E Wood Street	Bloomington	61701	32,621.00
Wichita Housing Authority	City Hall	Wichita	67202	292,630.00
Boston Housing Authority	52 Chauncy Street	Boston	02111	252,857.00
Braintree Housing Authority	25 Roosevelt Street	Braintree	02184	204,757.00
Housing Authority of Prince Georges County	9200 Basil Court	Largo	20774	130,530.00
Michigan State Housing Development Authority	735 E Michigan	Lansing	48912	110,372.00
St. Louis Housing Authority	3520 Page Boulevard	Saint Louis	63106	53,202.00
Housing Authority of St. Louis County	8865 Natural Bridge Road	Saint Louis	63121	62,674.00
Springfield Housing Authority	421 W Madison Street	Springfield	65806	110,130.00
Housing Authority of the City of Joplin, MO	1834 W 24TH Street	Joplin	64804	94,726.00
Franklin County Public Housing Agency	2 Merchant Dr	Hillsboro	63050	24,060.00
Missoula Housing Authority	1235 34th Street	Missoula	59801	158,911.00
Housing Authority of the City of Goldsboro	700 N Jefferson Ave	Goldsboro	27530	39,424.00
WNC Source	220 King Creek Blvd	Hendersonville	28792	32,585.00
Western Piedmont Council of Governments	1880 2nd Avenue NW	Hickory	28601	53,335.00
New Hampshire Housing Finance Agency	32 Constitution Drive	Bedford	03110	250,935.00
Hoboken Housing Authority	400 Harrison Street	Hoboken	07030	234,764.00
Gloucester County Housing Authority	100 POP Moylan Boulevard	Deptford	08096	75,107.00
City of Reno Housing Authority	1525 E 9th Street	Reno	89512	963,720.00
Columbus Metropolitan Housing Authority	880 East 11th Ave	Columbus	43211	385,068.00
Clermont Metropolitan Housing Authority	65 S Market Street	Batavia	45103	46,922.00
Housing Authority of the City of Lawton	609 SW F Avenue	Lawton	73501	44,003.00
Housing Authority of Clackamas County	13930 South Gain Street	Oregon City	97045	268,962.00
Linn-Benton Housing Authority	1250 SE Queen Ave	Albany	97322	175,005.00
Housing Authority of the City of York	31 S Broad Street	York	17403	54,222.00
Housing Authority of the County of Berks	1803 Butter Lane	Reading	19606	106,859.00
Housing Authority of the County of Cumberland	114 N Hanover Street	Carlisle	17013	84,303.00
Lancaster County Housing Authority	28 Penn Square	Lancaster	17603	146,935.00
The Greenville Housing Authority	122 Edinburgh Court	Greenville	29607	184,752.00
SC State Housing Authority	300—C Outlet Pointe Boulevard	Columbia	29210	392,472.00
Crossville Housing Authority	67 Irwin Avenue	Crossville	38555	91,544.00
Tennessee Housing Development Agency	502 Deaderick Street	Nashville	37243	160,070.00
Housing Authority of the City of Brownsville	2606 Boca Chica Boulevard	Brownsville	78521	28,031.00
McAllen Housing Authority	1200 N 25th St	McAllen	78501	27,251.00
Big Spring Housing Authority	201 NE 7th Street	Big Spring	79720	69,276.00
Texas Department of Housing & Community Affairs	221 E 11th Street	Austin	78701	29,408.00
St. George Housing Authority	975 N 1725 W	St. George	84770	31,889.00

Organization name	Street address or P.O. Box	City	Zip code	Award amount
Roanoke Redevelopment & Housing Authority	2624 Salem Turnpike NW	Roanoke	24017	155,891.00
Harrisonburg Redevelopment & Housing Authority	286 Kelley Street	Harrisburg	22802	70,978.00
Fairfax County Redevelopment & Hsg Authority	3700 Pender Drive	Fairfax	22030	266,011.00
Prince William County Office of HCD	15941 Donald Curtis Drive, Suite 112 ..	Woodbridge	22191	362,745.00
Housing Authority of the City of Bremerton	600 Park Avenue	Bremerton	98337	189,013.00
HA City of Tacoma	902 S L Street	Tacoma	98405	520,986.00
HA Of Grays Harbor County	602 East First Street	Aberdeen	98520	26,620.00
HA City of Pasco and Franklin County	2505 West Lewis Street	Pasco	99301	153,314.00
Housing Authority City of Bellingham	208 Unity Street	Bellingham	98225	37,643.00
Kitsap County Consolidated Housing Auth	2244 NW Bucklin Hill Road	Silverdale	98383	69,113.00
Housing Authority of Snohomish County	12711 4TH Avenue West	Everett	98204	344,547.00
HA Of Pierce County	603 So Polk St	Tacoma	98444	480,708.00
HA City of Spokane	25 W Nora Ave	Spokane	99205	795,165.00
Total .....	.....	.....	.....	16,126,622.00

Appendix F**FY 2023 Choice Neighborhoods Planning Grants (FR-6700-N-38)**

Contact: Luci Blackburn (202) 402-4190.

Organization name	Street address or P.O. Box	City	State	Zip	Award amount
Housing Authority of the City of Hagerstown	35 W Baltimore St	Hagerstown	MD	21740	\$500,000.00
Stark Metropolitan Housing Authority	400 E Tuscarawas Street	Canton	OH	44702	500,000.00
Housing Authority of the City of Bridgeport	150 Highland Avenue	Bridgeport	CT	6604	500,000.00
City of Albuquerque	P.O. Box 1293	Albuquerque	NM	87103	500,000.00
City of Bethlehem	10 E Church St	Bethlehem	PA	18018	500,000.00
Gainesville Housing Authority	1900 SE 4th Street	Gainesville	FL	32641	500,000.00
Housing Authority of the City of Daytona Beach	211 N Ridgewood Ave	Daytona Beach	FL	32114	500,000.00
Lift Orlando	710 South Tampa Ave	Orlando	FL	32805	500,000.00
Oklahoma City Housing Authority	1700 NE 4th Street	Oklahoma City	OK	73117	500,000.00
Peoria Housing Authority	100 S Richard Pryor Place	Peoria	IL	61605	500,000.00
Philadelphia Housing Authority	2013 Ridge Avenue	Philadelphia	PA	19121	500,000.00
Selma Housing Authority	444 Washington St	Selma	AL	36703	500,000.00
Housing Authority of Kansas City, Missouri	3822 Summit	Kansas City	MO	64111	500,000.00
Housing Authority of New Haven	360 Orange Street, New Haven, CT	New Haven	CT	06511	500,000.00
Total .....	.....	.....	.....	.....	7,000,000.00

Appendix G**FY 2023 Emergencies and Non-Presidentially Declare Disaster Fund PIH Notice 2012-48(HA)**

Contact: Luci Blackburn (202) 402-4190.

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount
Guttenberg Housing Authority	6900 Broadway Avenue	Guttenberg	NJ	07093	\$730,000.00
St. Joseph Housing Commission	601 Port Street	St. Joseph	MI	49085	1,242,880.00
Yale Housing Authority	601 Watson Drive	Yale	OK	74085	739,085.00
Dahlonega Housing Authority	90 Thompson Circle	Dahlonega	GA	30533	518,400.00
Village of Great Neck Housing Authority	700 Middle Neck Road	Great Neck	NY	11023	225,900.00
Lowell Housing Authority	350 Moody Street	Lowell	MA	01854	1,970,773.00
Leachville Housing Authority	410 E 5th Street	Leachville	AR	72438	812,889.00
Jefferson Housing Authority	1040 Myrtle Avenue	Jefferson City	MO	65102	799,154.00
Total .....	.....	.....	.....	.....	7,039,081.00

Appendix H**FY 2023 HOPE VI Main Street Grant Program (FR-6700-N-03)**

Contact: John Holtgreive (202) 402-6645.

Organization name	Street address or P.O. Box	City	State	Zip code	Award and amount of total
City of Caney	100 W 4th Ave	Caney	KS	67333	\$500,000.00
City of Emporia Kansas	522 Mechanic Street	Emporia	KS	66801	500,000.00
Municipality of Manati	#10 Calle Quinones	Manati	PR	00674	1,000,000.00
Total .....	.....	.....	.....	.....	2,000,000.00

Appendix I**FY22 and FY23 Distressed Cities Technical Assistance (DCTA) Program (FR-6700-N-54)***Contact:* Carol Gilliam, 202-402-4354.

Organization name	Street address or P.O. Box	City	State	Zip code	Award and amount of total
BCT Partners, LLC	105 Lock Street, Suite 311	Newark	NJ	07103	\$2,000,000
Capital Access, Inc	220 Locust Street, Suite 16C	Philadelphia	PA	19106	1,000,000
Enterprise Community Partners, Inc	70 Corporate Center, 11000 Broken Land Parkway.	Columbia	MD	21044	1,950,000
Local Initiatives Support Corporation	28 Liberty Street, 34th Floor	New York City	NY	10005	1,000,000
Midwest Evaluation and Research, LLC	1005 Constitution Street, Suite 500	Emporia	KS	66801	1,000,000
Total .....	.....	.....	.....	.....	6,950,000

Appendix J**HUDRD—Hispanic Serving Institutions (HSI) Research Center of Excellence Program (FR-6600-N-29G)***Contact:* Carol Gilliam (202) 402-4354.

Organization name	Street address or P.O. Box	City	State	Zip code	Amount
Texas Tech University	Research Services, 349 Admin Bldg	Lubbock	TX	79409	\$3,207,839
Arizona State University	Office Research Sponsored Programs Administration, P.O. Box 876011.	Tempe	AZ	85287	3,000,000.00
University of Texas at Austin	3925 West Braker Lane, Building 156, Suite 3340.	Austin	TX	78759	2,459,527
Texas Agricultural and Mechanical University	400 Harvey Mitchell Parkway, South, Suite 300.	College Station	TX	77845	1,832,634
Total .....	.....	.....	.....	.....	10,500,000

Appendix K**FY2022 Authority To Accept Unsolicited Proposals for Research Partnerships (FR-6600-N-USP)***Contact:* Carol Gilliam (202) 402-4354.

Organization name	Street address or P.O. Box	City	State	Zip code	Amount
New York University, Furman Center	665 Broadway, Suite 801	New York	NY	10012-233	\$650,000
The Regents of the University of California U.C. San Diego.	9500 Gilmore Drive	La Jolla	CA	92093-9934	350,000
City of NOME	P.O. Box 281	Nome	AK	99762-0281	600,000
Total .....	.....	.....	.....	.....	1,600,000

Appendix L**FY2023 HUDRD—Closing the Homeownership Gap and Preserving Homeownership During Economic Decline (FR-6700-N-29I)***Contact:* Carol Gilliam (202) 402-4354.

Organization name	Street address or P.O. Box	City	State	Zip code	Amount
New America Foundation	740 15th Street NW, Suite 900	Washington	DC	20005-1031	\$251,925
The Regents of the University of Michigan	3003 S State Street	Ann Arbor	MI	48109-1274	330,000.00
Abt Associates	6130 Executive Blvd	Rockville	MD	20852-4907	416,358
Total .....	.....	.....	.....	.....	998,283

Appendix M**FY23 HUDRD Grants for University-Nonprofit Partnerships Supporting Community—Engaged Research Designed To Address Homelessness (FR-6700-N-29K)***Contact:* Carol Gilliam (202) 402-4354.

Organization name	Street address or P.O. Box	City	State	Zip code	Amount
The Arizona Board of Regents for and on behalf of Northern Arizona University.	P.O. Beaver Box 4130, 525 S Beaver Street, Bldg. 20, 4th Floor.	Flagstaff	AZ	86011-4130	\$726,306
New York University (NYU) Grossman School of Medicine.	One Park Avenue	New York	NY	10016-5802	631,902
Total .....	.....	.....	.....	.....	1,358,208

Appendix N**FY2023 and FY2024 Radon Testing and Mitigation Demonstration for Public Housing (FR-6700-N-80)***Contact:* Rhona Julien Sc.D. (202) 402-6842.

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount and total
Warren County Housing Authority	200 E Harlem Ave	Monmouth	IL	61462-1273	\$600,000.00
Housing Authority of Prince George's County	9200 Basil Court	Largo	MD	20774-5358	450,678.00
The Housing Authority of Kansas City Missouri	3822 Summit	Kansas City	MO	64111-4652	508,274.00
Blair Housing Authority	758 S 16th Street	Blair	NE	68008-2387	442,858.00
Columbiana Metropolitan Housing Authority	325 Moore Street	East Liverpool	OH	43920-2572	600,000.00
Maryville Housing Authority	311 Atlantic Ave	Maryville	TN	37801-2166	446,122.00
Total .....	.....	.....	.....	.....	3,047,932.00

Appendix O**Healthy Homes Production Grant Program (FR-6700-N-44)***Contact:* Sacsheen Scott (202) 402-4370.

Organization name	Street address or P.O. Box	City	State	Zip code	Award amount and total
Fairbanks Neighborhood Housing Services	1427 Gillam Way	Fairbanks	AK	99701	\$2,000,000.00
Rural Alaska Community Action Program, Inc., (Rural CAP).	731 E 8th Ave	Anchorage	AK	99501	1,997,325.00
Chilkat Indian Village (Klukwan)	HC60 Box 2207	Klukwan	AK	99827	1,000,000.00
City of Long Beach	2525 Grand Avenue	Long Beach	CA	90815	1,706,641.00
Greater Miami Service Corps	810 NW 28th Street	Miami	FL	33127	1,605,735.00
Troup County—Habitat for Humanity	333 Main St	LaGrange	GA	30240	1,987,070.00
City of Atlanta	55 Trinity Avenue SW	Atlanta	GA	30303	1,753,802.00
City of Waterloo	620 Mulberry Street	Waterloo	IA	50703	1,999,991.00
Young Adult Development in Action, Inc	800 S Preston Street	Louisville	KY	40203	1,999,969.00
Frontier Housing, Inc	5445 Flemingsburg Rd	Morehead	KY	40351	1,408,469.00
Multi-County Community Service Agency, INC	2906 St. Paul Street P.O. Box 905	Lauderdale	MS	39301	2,000,000.00
Northern Cheyenne Tribal Housing Authority	P.O. Box 327	Lame Deer	MT	59043	1,833,082.00
Rebuilding Together Southern Nevada	611 South Ninth Street	Las Vegas	NV	89101	1,250,000.00
Genesee County	3837 West Main St. Rd	Batavia	NY	14020	1,182,681.00
County of Madison, NY	138 N Court Street	Wampsville	NY	13163	2,000,000.00
Albany Community Development Agency	200 Henry Johnson Blvd	Albany	NY	12210	1,890,000.00
Community Housing Solutions	12114 Larchmere Blvd	Cleveland	OH	44120	2,000,000.00
Neighborhood Housing Services of Toledo, Inc	704 Second Street	Toledo	OH	43605	1,994,245.00
S.A.F.E.-Housing INC	434 Peepytown Road	East Berlin	PA	17316	2,000,000.00
Shelby County	1075 Mullins Station Road	Memphis	TN	38134	1,500,000.00
Weber-Morgan Health Dept	477 23rd Street	Ogden City	UT	84401	2,000,000.00
Tulalip Tribes of Washington	6406 Marine Drive	Tulalip	WA	98271	1,971,619.00
Total .....	.....	.....	.....	.....	39,080,629.00

[FR Doc. 2024–20966 Filed 9–13–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR–6487–N–01]****Allocating Lead Hazard Control and Healthy Homes Grant Funding Using a Formula Approach; Request for Information**

AGENCY: Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development (HUD).

ACTION: Request for information.

SUMMARY: Through this request for information (RFI), HUD seeks public input regarding the development of program components for a formula grant program to allocate funding for HUD's Lead Hazard Reduction and Healthy Homes grant programs. Currently, these grant programs are statutorily required to make funding awards on a competitive basis; however, HUD has requested Congressional approval to award a portion of grant funds to eligible jurisdictions using a formula rather than using the competitive, and procedurally more complex, process for these jurisdictions to apply for grants. HUD believes that a formula grant program may allow more efficient distribution of funding to highest need communities, streamline the selection and award of grants, and help maximize funding utilization.

DATES: *Comment Due Date:* November 15, 2024. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are invited to submit comments responsive to this RFI. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided

on that website to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

Public Inspection of Public Comments. All properly submitted comments and communications will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Peter Han, Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development, 451 7th Street SW, Room 8236, Washington, DC 20410–3000, telephone 202–402–7698 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:**I. Background**

The purpose of HUD's Lead Hazard Reduction grant programs is to maximize the number of children under the age of six protected from lead poisoning by assisting certain States and Tribes,¹ as well as cities, counties/parishes, and other units of local government in undertaking comprehensive programs to identify and control lead-based paint hazards² in

¹ States and federally recognized Native American Tribes must have an Environmental Protection Agency (EPA)-authorized lead abatement certification program to receive funding through HUD's Lead Hazard Reduction grant program.

² 42 U.S.C. 4851b, for which “appropriate Federal agency” is, per 15 U.S.C. 2683, the EPA, which

eligible privately-owned rental or owner-occupied housing populations. Operating since 1993, these programs award grants on a competitive basis as required by statute.³ Under the Residential Lead-Based Paint Hazard Reduction Act of 1992, commonly referred to as title X,⁴ States and units of local government are eligible for these grant programs if they have an approved comprehensive housing affordability strategy. States and Tribes must also be authorized by the Environmental Protection Agency (EPA) to administer the certification program for lead abatement professionals and contractors to conduct such work within their jurisdiction.⁵

Under the Lead Hazard Reduction grant programs, HUD makes available Healthy Homes Supplemental funding that is intended to enhance the lead-based paint hazard control activities by comprehensively identifying and addressing other housing-related hazards that affect occupants' health in homes where lead hazard reduction work is being conducted under the grant programs. The Healthy Homes Supplements are authorized under section 501 and 502 of the Housing and Urban Development Act of 1970.⁶

Funding for these Lead Hazard Reduction grant programs is provided in annual appropriations to HUD, specifically to its Office of Lead Hazard Control and Healthy Homes (OLHCHH). As of the publication of this RFI, the two most recent fiscal years' appropriations were:

- The Consolidated Appropriations Act, 2023.⁷ The OLHCHH's appropriation is within division L, title II, of the Act.
- The Consolidated Appropriations Act, 2024.⁸ The OLHCHH's

issues its regulation operationalizing the statutory definition at 40 CFR 745.65.

³ See 42 U.S.C. 4852.

⁴ 42 U.S.C. 4822 *et seq.*, 4851 *et seq.*

⁵ As noted in fn. 1, EPA allows federally recognized Tribes to be authorized to administer lead abatement certification programs. For additional information, see the Environmental Protection Agency, Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, section IX.F (Treatment of Tribes as a State), 61 FR 45778, 45805 (Aug. 29, 1996). Because title X, sec. 1011(n) (Relationship to other law) requires that States have lead abatement certification program authorization from EPA to be awarded a Lead Hazard Reduction grant, HUD also treats Tribes as a State for this purpose and requires that they have such authorization to be awarded such a grant.

⁶ 12 U.S.C. 1701z–1 and 1701z–2.

⁷ Public Law 117–328, 136 Stat. 4459, 5167–68 (Dec. 29, 2022).

⁸ Public Law 118–42, 138 Stat. 7, 370–372 (Mar. 29, 2024).

appropriation is within division F, title II, of the Act.

As authorized by the cited Appropriations Acts, HUD publishes notices of funding opportunity (NOFOs) for the Lead Hazard Reduction grant programs and awards grants competitively based on applications submitted in response to the NOFOs. HUD publishes its NOFOs on the *Grants.gov* website of the Department of Health and Human Services.⁹ HUD posted its fiscal year (FY) 2023 and FY 2024 Lead Hazard Reduction NOFOs on June 14, 2023, and June 21, 2024, respectively.¹⁰

In its FY 2025 budget proposal, HUD requested Congressional approval to award a portion of allotted Lead Hazard Reduction Grants, and all of the Lead Hazard Reduction Demonstration Grants, by formula grants instead of the traditional competitive grants, together with proportional Healthy Homes Supplemental funding.¹¹ If Congress approves HUD's budget request for FY 2025 or in a subsequent year, a new formula grant program design would reduce the procedural complexity placed on jurisdictions to apply for grants, streamline the process for HUD to select jurisdictions to receive these formula grants, allow more efficient distribution of funding to communities facing the most substantial lead paint hazard problems, and help maximize funding utilization when complemented by a portion of the funds being used for competitive grants. Federal financial assistance for these grants will still be conditioned upon HUD receiving Certifications and Assurances of nondiscrimination. The requirements to fulfill this requirement will be in the notice announcing funding if this grant change is implemented.

II. Purpose of This Request for Information

A major HUD operational goal for the Lead Hazard Reduction grant programs is to expedite resources into communities to create homes free of lead-based paint hazards for at-risk families, especially their children, by funding lead hazard reduction

activities—whether permanent or not.¹² In addition, the programs' grant awards may be accompanied by Healthy Homes Supplements to mitigate other housing-related health hazards. To accomplish this goal and continue HUD's efforts to reduce barriers to access grant funding, improve the customer experience for Lead Hazard Reduction grant applicants and grantees, and actively solicit input of program grantees and beneficiaries, HUD is soliciting comment through this RFI regarding the development of a potential new grant program that would make Lead Hazard Reduction grant awards using formula grants rather than the competitive grants initiated through NOFOs.

HUD invites public input relating to the determination of a grantee's funding allocation by a formula and the specific criteria or objective measures that HUD should consider using in a formula. This determination of an appropriate funding allocation is critical because the funding amount for each recipient under a formula grant would be calculated based on these specific criteria or objective measures or other factors. HUD is aware of several published models that identify U.S. lead exposure risk based on lead indices and invites the public to provide input where these models should be used in the development of a possible, future formula grant program. HUD also invites public input related to the appropriate parameters for a possible, future formula grant program, including length of period of performance, jurisdictional level eligible recipients (e.g., city, county, State, Tribe), and frequency of recipient funding.

HUD emphasizes that it is not currently authorized to offer formula grants for the Lead Hazard Reduction and Healthy Homes grant programs and this RFI does not announce any new grant programs, formula-based or otherwise. Instead, HUD is issuing this RFI to seek public feedback regarding the potential use of a formula grant program for the Lead Hazard Reduction and Healthy Homes programs should Congress grant HUD the authority to allot a portion of funding through the use of a formula grant.

III. Specific Information Requested

While HUD welcomes all public comments relevant to improving the Lead Hazard Reduction and Healthy Homes grant programs, HUD is particularly interested in receiving input on the questions listed below. To assist commenters, HUD provides the

following guidance and list of specific information requested.

Please indicate in your written comments the area of interest and the topic number(s) you are commenting on and provide specific information to illustrate your comments where possible. You do not need to address every topic, and you should focus on those topics where you have relevant expertise, experience, or data. To the extent possible, please cite any public data, peer-reviewed journal articles, and other publicly accessible information that relate to and supports your responses. If information or data is available but is non-public, describe the information or data to the extent permissible, noting that it is non-public.

The Fair Housing Act requires HUD and its recipients to affirmatively further fair housing by proactively taking meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination. In addition, all HUD programs have an obligation to advance racial equity and eliminate racial disparities under Executive Orders 13985 and 14091. Please consider this in addressing any of the questions below; you may provide feedback and evidence on ways that proposed criteria or policies may advance or frustrate these requirements.

HUD thanks submitters in advance for their information and comments.

1. Funding Criteria

a. Using available data, what criteria should be included in a formula for funding?

There are several HUD programs that use a formula allocation approach to funding, including the HOME Investment Partnerships Program (HOME) and the Community Development Block Grant (CDBG) Program.

For HOME, HUD determines the funding allocation for each participating jurisdiction using several objective measures. These measures include vacancy-adjusted rental units where the household head is at or below the poverty level; occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs); rental units built before 1950 and occupied by poor households; rental units with problems, as described above, multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost; number of families at or below the poverty level;

⁹ See <https://www.grants.gov/>. The *grants.gov* website is designed to enable Federal grant-making agencies to create funding opportunities and applicants to find and apply for these Federal grants.

¹⁰ See <https://www.grants.gov/search-results-detail/341222>; <https://www.grants.gov/search-results-detail/355076>.

¹¹ Described in HUD's budget Congressional justification, https://www.hud.gov/sites/dfiles/CFO/documents/2025_CJ_Program_-_Lead_Hazard_Reduction_v2.pdf.

¹² For HUD's general lead-based paint definitions for all programs, see 24 CFR 35.110.

and population of a jurisdiction multiplied by a net per capita income.¹³

For the CDBG Program, HUD determines the amount of each entitlement grantee's funding allocation using several objective measures. These measures include demographic values of population; the extent of poverty; housing overcrowding; and age of housing (excluding this data for any Indian Tribes located within the grantee's jurisdiction(s)).¹⁴

HUD is not considering using either the HOME or CDBG Program formulas for a possible, future formula grant to allocate funding for HUD's Lead Hazard Reduction and Healthy Homes grant programs. Instead, HUD is seeking information from the public on which specific measures it should consider in developing a formula grant, such as rates of elevated blood lead levels in children; related housing, economic, and demographic factors more relevant for making homes lead-safe and healthy; and ways in which HUD should consider such measures.

b. There are available data models that have been used to identify well-defined geographic areas with greater risk of exposure to lead based paint. Should HUD use any of these models for a funding formula?

There is no national database that covers each State and local jurisdiction for determining and comparing the rates of elevated blood lead levels in children under age 6. The Centers for Disease Control and Prevention (CDC) maintains a National Surveillance Data table website¹⁵ with State-level blood lead test data covering 34 States plus the District of Columbia (DC) and New York City.¹⁶ For each of these jurisdictions, the data covers some or all years from 2012 through 2018. CDC also maintains a Childhood Lead State Surveillance Data website with county-level data from up to 33 States plus DC.¹⁷ For each of these jurisdictions, the data covers some or all years from 2013 through 2017. The websites indicate that the data come from States (and certain other jurisdictions) funded by CDC for childhood lead poisoning prevention and surveillance, plus data provided

voluntarily. CDC processes and validates data submissions.

HUD is interested in how the CDC-maintained data and data in any other sources of nationally scoped, geographically specific blood lead data on children under age 6 can be used in a possible future formula grant. HUD is particularly interested in public comments on how to handle data gaps. For example, the 2023 Lead Hazard Reduction NOFO states, in rating applications, that "[i]f no data are shown for the state, use the most recent national percentage (for 2018), 3.0% of tested children < six (6) years with BLL $\geq$ 3.5 μ g/dL." For a formula grant program, is this an appropriate approach (with, for example, possible updating of the percentage if sufficient data from year(s) more recent than 2018 are available), or is there an improved approach for addressing available State-level or county-level data covering most States or most counties?

In addition, HUD is aware that there have been several risk models developed to identify U.S. lead exposure that include measures such as housing age and sociodemographic data.¹⁸ Therefore, HUD is interested in whether any of these risk models should be used, whether as is or with modification, how such risk models could be used as the basis for funding allocation, and whether their use is more advantageous than developing a different formula that uses several objective measures.

c. Because criteria can be applied to certain States and Tribes, and to counties, and cities (and comparable jurisdictions at each level), but grants should be non-duplicative, what approaches should be used to filter selection recommendations so that lower-rated jurisdictions within higher-rated jurisdictions are not also awarded grants for the same target area where lead hazard reduction work is to be done?

HUD's Lead Hazard Reduction grants are open to "[a] State or unit of local government that has [a HUD-] approved comprehensive housing affordability strategy" ¹⁹ The strategy is now part of a HUD-approved consolidated

plan.²⁰ To avoid duplicate grants to a particular target area, the target area for a county grant is for the areas not covered by the higher-rated cities within it (e.g., the target area is the suburbs of any higher-rated cities within), and similarly, the target area for a State grant is for areas other than the higher rated cities and counties within (somewhat analogous to the concept of non-entitlement areas under State Community Development Block Grant Programs vs. entitlement communities under Community Development Block Grant Programs²¹). HUD is interested in public comments regarding approaches for these types of filtering of the ratings of the various jurisdictions.

2. In addition to the criteria included in a formula for funding, should there be other considerations for the award of formula grants?

a. High performing competitively awarded grants.

HUD has approximately 199 Lead Hazard Reduction grantees holding approximately 212 grants. These grants were all awarded based on merit through a competitive process, using NOFOs as described above. In the past, HUD used a process where high performing Lead Hazard Reduction grantees could be "renewed" based on their performance; however, these subsequent awards were not automatic and were awarded competitively based on available funding and other conditions that had to be met by the applicant jurisdiction. HUD is interested in comments regarding whether a category for formula award should include current high performing grantees, whether awarded competitively or by formula, and, if so, what considerations should be used for renewing such grants.

b. Sequencing of awards to previously awarded formula-funded grants.

HUD has found that grantees, in the year following their award of a renewed Lead Hazard Reduction grant, tended to devote more attention to the earlier grant because it had passed the startup phase and was producing lead safe and healthy housing units. This added attention to earlier grants resulted in renewal grants tending to move more slowly through startup than grantees had committed to doing in their applications. In addition, some of the earlier grants tended not to produce lead safe units at the expected rate because the grantee's attention was divided

¹³ For additional information on the HOME formula allocation, see 24 CFR 92.50.

¹⁴ For additional information on the CDBG allocation of funds, see 24 CFR 570.4.

¹⁵ Available at <https://www.cdc.gov/lead-prevention/php/data/national-surveillance-data.html>.

¹⁶ For the table with data in spreadsheet format, see <https://www.cdc.gov/lead-prevention/media/files/cbls-national-data-table-sheet.xlsx>.

¹⁷ See <https://www.cdc.gov/lead-prevention/php/data/state-surveillance-data.html>.

¹⁸ See, e.g., Zartarian V, Poulakos A, Helms Garrison V, Spalt N, Tornero-Velez R, Xue J, Egan K, and Courtney J, Lead Data Mapping to Prioritize US Locations for Whole-of-Government Exposure Prevention Efforts: State of the Science, Federal Collaborations, and Remaining Challenges, *American Journal of Public Health* 112, no. S7 (September 1, 2022): pp. S658–S669, <https://doi.org/10.2105/AJPH.2022.307051>, and references to models therein.

¹⁹ See 42 U.S.C. 4852(b).

²⁰ See 42 U.S.C. 12705(g)(1), 24 CFR 570.3 "Consolidated plan", and, therefrom, sections. 91.5, 91.200, 91.300.

²¹ For example, compare 24 CFR part 570, subpart I with 24 CFR part 570, subpart D.

between multiple grants. Given this tendency, HUD has been requiring a waiting period of 1 to 3 years before a Lead Hazard Reduction grantee is eligible for another Lead Hazard Reduction grant. For example, in its FY 2021 NOFO, HUD specified that if a jurisdiction received Lead Hazard Reduction grant funding in 2019 or 2020, it was not eligible to apply under the program;²² and HUD specified in the FY 2024 NOFO that a jurisdiction that received Lead Hazard Reduction grant funding in 2023 was not eligible to apply under the program.²³ HUD is interested in feedback on whether a waiting period of two years is appropriate for a potential Lead Hazard Reduction formula grant or whether some other waiting period would be appropriate for maximizing the production of lead safe and healthy housing units by individual formula grantees and the program overall.

c. Effect of poor performance under a previous grant on the award of a new formula grant.

HUD grant award requirements incorporate the Office of Management and Budget's (OMB) grant regulations, particularly its Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200. In particular, OMB's provisions relating to the award of grants²⁴ state that the pre-Federal award requirements and contents of Federal awards²⁵ apply to Federal grant agreements—such as the Lead Hazard Reduction grants with their Healthy Homes Supplements. Among those requirements is the Federal awarding agency review of risk posed by applicants. Awarding agencies, including HUD, must have a framework for evaluating the risks posed by applicants before they receive Federal awards.²⁶ HUD may decide that the risks posed by a particular jurisdiction are so high that the Department will not make an award to the jurisdiction, or HUD may apply special conditions to the grant that correspond to the degree of risk assessed. Among the factors that may be used in this risk evaluation is the jurisdiction's history of performance in managing Federal awards.²⁷

Under title X, HUD has a national perspective on the effective use of Lead Hazard Reduction grant funds to eliminate lead-based paint hazards in

housing as expeditiously as possible.²⁸ HUD is interested in learning the public's views on how the poor performance of a prior-year Lead Hazard Reduction grantee (whether its grant is awarded competitively or by formula) should affect HUD's evaluation of the risk of awarding that grantee a formula grant. For example, HUD seeks suggestions regarding when not to award a grant to a previously poor performing grantee and, instead, award the funds to the jurisdiction with the next-highest need, and when and what special conditions to apply to a previously poor performing grantee.

3. Regarding award amounts, should a Lead Hazard Reduction formula grant program have smaller awards to geographically disperse the funding, or should larger grant amounts be awarded which would concentrate funding in certain highest-risk communities but reduce the number of jurisdictions receiving funds?

Title X identifies several purposes for the Lead Hazard Reduction program,²⁹ including to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible and to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock. In implementing title X, HUD has awarded Lead Hazard Reduction grants across the U.S. to large and small jurisdictions, both rural and urban.

If a formula grant program is authorized, HUD intends to continue the approach regarding jurisdictions' size and urbanicity; however, HUD is interested in receiving feedback from the public on whether HUD's formula grant resources should focus on addressing lead-based paint hazards in as many as possible high-risk locations across the U.S. or focus on areas of highest potential lead exposure risk to have a greater effect on communities at highest risk, or in a balance between the two (and what the balancing criteria should be).

4. What should be the period of performance duration for a formula grant?

HUD's FY 2023 and FY 2024 Lead Hazard Reduction grant programs each have specified 48-month periods of performance. Previous grantee periods of performance have been 36 months

and 42 months. Historically, HUD has varied the periods of performance based predominately on the maximum award amount in a particular NOFO, with higher grant amounts necessitating longer periods of performance. HUD seeks public input on appropriate grant durations for a formula-based Lead Hazard Reduction grant.

Matthew Ammon,

Director, Office of Lead Hazard Control and Healthy Homes.

[FR Doc. 2024-21002 Filed 9-13-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN; MO# 04500179291]

Notice of Availability of the Record of Decision for Libra Solar in Lyon and Mineral Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement for the Libra Solar Project located in Lyon and Mineral Counties, Nevada. The ROD was signed on September 10, 2024, which constitutes the decision of the BLM, as approved by the Department of the Interior.

DATES: The ROD was signed on September 10, 2024.

ADDRESSES: The ROD is available online at <https://eplanning.blm.gov/eplanning-ui/project/2022592/510>. Printed copies of the ROD are available for the public at the Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada or can be provided upon request by Carson City District Public Room at: 775-885-6000.

FOR FURTHER INFORMATION CONTACT: Lisa Ross, Public Affairs Specialist, telephone (775) 885-6107; address 5665 Morgan Mill Road, Carson City, NV 89701; email blm_nv_ccdo_libra_solar@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 for contacting Ms. Ross. 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.

²² Available at <https://www.grants.gov/search-results-detail/333884>.

²³ Available at <https://www.grants.gov/search-results-detail/355076>.

²⁴ See the table in 2 CFR 200.101(b)(2).

²⁵ 2 CFR part 200, subpart C.

²⁶ 2 CFR 200.206.

²⁷ 2 CFR 200.206(b)(2)(iii).

²⁸ 42 U.S.C. 4851a(1).

²⁹ 42 U.S.C. 4851a.

SUPPLEMENTARY INFORMATION: The Department of the Interior has approved the BLM's decision to issue a right-of-way grant for construction, operation and maintenance (O&M), and decommissioning of a 5,141-acre solar facility wholly on BLM lands with a 24.1-mile-long gen-tie line to connect to the existing Fort Churchill substation near the town of Yerington in Lyon County, Nevada. The Project includes the following primary components: (1) a 700 megawatt (MW) alternating current (MWac) solar photovoltaic power generating facility; (2) a 700 MW battery energy storage system; (3) linear and ancillary facilities, including access roads, electrical distribution lines, and communication cables; (4) O&M facilities; and (5) a substation and a 24.1-mile-long 345 kilovolt (kV) or 525 kV gen-tie line into the Fort Churchill substation, of which 22.9 miles would be on the BLM-managed lands. The project and planning area is approximately 55 miles southeast of the Reno metropolitan area, 11 miles southeast of the town of Yerington, 7 miles west of U.S. Route 95, and 8 miles east of State Route 208.

The decision to authorize this energy generation project on public lands is consistent with the Federal Land Policy and Management Act, as amended, and the BLM's right-of-way regulations (43 U.S.C. 1761; 43 CFR part 2800).

Approval of this right-of-way constitutes the final decision of the Department of the Interior and is not subject to appeal under Departmental regulations at 43 CFR part 4.

(Authority: 40 CFR 1501.9)

Kimberly D. Dow,

District Manager, Carson City District.

[FR Doc. 2024–20948 Filed 9–13–24; 8:45 am]

BILLING CODE 4331–21–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1416]

Certain Hydrodermabrasion Systems and Components Thereof II; Correction; Notice of Institution of Investigation; Correction

AGENCY: International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the investigation caption.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 10, 2024 (89 FR 73446–47) in FR Doc.

2024–20417, on page 73446, in the second column, the investigation caption should read: [Certain Hydrodermabrasion Systems and Components Thereof II].

Issued: September 10, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–20928 Filed 9–13–24; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA). The current Advisory Committee members' terms expire on February 28, 2025. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the March 1, 2025–February 28, 2027, term.

DATES: Applications for membership on the Advisory Committee must be received by the Joint Board no later than December 6, 2024.

ADDRESSES: Send applications electronically with APPLICATION FOR ADVISORY COMMITTEE inserted in subject line to NHQJBEA@irs.gov. See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 202–317–3648 or elizabeth.j.vanosten@irs.gov.

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement

by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs.

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) developing and reviewing examination questions, (3) recommending proposed examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Members are appointed for a two-year term. The upcoming term will begin on March 1, 2025, and end on February 28, 2027. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately four meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. Meetings may be held in-person or by teleconference. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the

Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications must be submitted electronically to NHQJBEA@irs.gov. The transmittal email should include APPLICATION FOR ADVISORY COMMITTEE in the subject line. Applications must be received by December 6, 2024.

Dated: September 10, 2024.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2024-20898 Filed 9-13-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Defense Industrial Based Consortium

Notice is hereby given that, on June 28, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Defense Industrial Based Consortium ("DIBC") has filed

written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 10x National Security LLC, Aldie, VA; 12031507 Canada, Inc. dba Ribbit, Toronto, CANADA; 327 Solutions, Inc., Paoli, PA; 3D Glass Solutions, Inc., Albuquerque, NM; 3D Systems Inc., Rock Hill, SC; A.T. Kearney Public Sector and Defense Services LLC, Arlington, VA; Advanced Composite Products and Technology, Inc., Huntington Beach, CA; Advanced Materials Manufacturing LLC, Raleigh, NC; Advanced Powder Products, Philipsburg, PA; Aeon Industrial, Inc., Austin, TX; Aerocyonics, Inc., East Greenwich, RI; Aerojet Rocketdyne, Inc., Huntsville, AL; AeroVironment, Inc., Simi Valley, CA; Aether Biomachines, Inc., Menlo Park, CA; AForge LLC, Alexandria, VA; Agility Technical Solutions LLC, Bee Caves, TX; Air Protein, Inc., San Leandro, CA; AKG Advisory Services, Bridgeville, PA; Albany Engineered Composites, Inc., Rochester, NH; Alchemy Geopolymer Solutions LLC, Ruston, LA; Alentic Microscience, Inc., Halifax, CANADA; Algenesis Corp., Cardiff, CA; Alkemix Corp., Laguna Hills, CA; Allied Logistics LLC, Summerville, SC; Allihies Engineering, Inc., Butte, MT; Ambri, Inc., Marlborough, MA; American Flowform Products LLC, Billerica, MA; AMERICAN LIGHTWEIGHT MATERIALS MANUFACTURING INNOVATION INSTITUTE, Detroit, MI; American Rheinmetall Munitions, Inc., Stafford, VA; AMERICAN SOCIETY FOR TESTING AND MATERIALS dba ASTM International, West Conshohocken, PA; American Standard Circuits LLC, West Chicago, IL; Americarb, Inc., Niagara Falls, NY; Amsted Graphite Materials LLC, Anmoore, WV; Anactisis LLC, Pittsburgh, PA; Anduril Industries, Inc., Costa Mesa, CA; Applied Research Institute, Inc., Bloomington, IN; Arcology, Inc., Culver City, CA; Arkham Technology Ltd., Irvine, CA; Armtec Defense Products Co., Coachella, CA; Astro Machine & Tool Works LLC, Tyler, TX; AstroForge, Inc., Huntington Beach, CA; ATC Alliance, Seattle, WA; Atomic Machines, Inc., Berkeley, CA; Australian Strategic Materials Ltd., Perth, AUSTRALIA; Avadain, Inc., Eads, TN; Aviation Resources and Consulting Services dba ARCS Aviation), Cookeville, TN; Avio USA,

Inc., Arlington, VA; BAE Systems Information and Electronic Integration, Inc., Nashua, NH; BAE Systems, Inc. Ordnance Systems, Kingsport, TN; Ball Aerospace & Technologies Corp., Boulder, CO; BC Technical Center LLC dba BC Engineered Products, Morristown, NJ; Beehive Industries LLC, Centennial, CO; BGT Aerospace LLC, Freeland, MI; Bigelow Family Holdings LLC dba Mettle Ops, Sterling Heights, MI; Binoloop, Inc., Calgary, CANADA; BioCircuit Technologies, Inc., Atlanta, GA; BioWell, Houston, TX; Blash LLC, Ashland, OH; Blue Whale Materials LLC, Washington, DC; Bluefusion, Inc., Boston, MA; Bluestem Biosciences, Inc., Omaha, NE; Boston Engineering Corp., Waltham, MA; C&R Racing, Inc., Indianapolis, IN; C16 Biosciences, Inc., New York, NY; Cailabs US, Inc., Washington, DC; Calumet Electronics Corp., Calumet, MI; Capital Composites, San Diego, CA; Capra Biosciences, Sterling, VA; Captis Aire LLC, East Point, GA; Carbon-Carbon Advanced Technologies, Inc., Arlington, TX; Carlos Maidana dba MAIDANA RESEARCH, Pocatello, ID; Carnegie Mellon University, Pittsburgh, PA; Castheon, Inc., Thousand Oaks, CA; Cauldron Molecules, Inc., San Antonio, TX; CCX Technologies, Inc., Ottawa, CANADA; Cellibre, Inc., San Diego, CA; Cenith Innovations LLC, Sacramento, CA; Cerebral Energy LLC, Keller, TX; Channel Logistics LLC, Miami, FL; Charles River Analytics, Inc., Cambridge, MA; Checkerspot, Inc., Alameda, CA; Clara Foods Company dba The EVERY Company, Daly City, CA; Clarity Cyber LLC, Linthicum, MD; Clark Street Associates LLC, Los Altos, CA; CleanJoule, Inc., Salt Lake City, UT; Cleveland State University, Cleveland, OH; Colvin Run Networks, Inc., Tysons, VA; Compusult Ltd., Mount Pearl, CANADA; Cornet Technology, Inc., Springfield, VA; Corning Research & Development Corp., Corning, NY; Creaform USA, Inc., Irvine, CA; CubeCab Co., Mountain View, CA; Cummings Aerospace, Inc., Huntsville, AL; Curators of the University of Missouri, Columbia, MO; Cytec Engineered Materials, Inc., Alpharetta, GA; Danimer Bioplastics, Inc., Bainbridge, GA; Danimer Scientific, Inc., Bainbridge, GA; DDM Systems, Inc., Atlanta, GA; Debut Biotechnology, Inc., San Diego, CA; Decisive Point LLC, Cold Spring, NY; Defense Unicorns, Inc., Colorado Springs, CO; Designed Precision Castings, Inc., Brampton, CANADA; Divergent Technologies, Inc., Torrance, CA; DM3D Technology LLC, Auburn Hills, MI; Dmaterial IP LLC, Bedford Park, IL; Domenix Corp.,

Chantilly, VA; Dreadnought Resources Ltd., Osborne Park, AUSTRALIA; DSM NUTRITIONAL PRODUCTS LLC, Plainsboro, NJ; Duality Systems LLC, Monument, CO; Dynovas, Inc., Poway, CA; E3 Lithium Ltd., Calgary, CANADA; Eagle Minerals West LLC, Atlanta, GA; Earthly Dynamics LLC, Roswell, GA; East Tennessee State University Research Foundation, Johnson City, TN; Eco Building Corp. dba Emerging Technology Institute, Red Springs, NC; Edaptive Computing, Inc., Centerville, OH; Edge Case Research, Inc., Pittsburgh, PA; Edison Welding Institute, Inc., Columbus, OH; Education and Consulting LLC, Phoenix, AZ; Elk Creek Resources Corp., Centennial, CO; Ellis & Watts Global Industries, Inc., Batavia, OH; Energetics Technology Center, Inc., Indian Head, MD; EnerSys Energy Products, Inc., Warrensburg, MO; EngeniusMicro LLC, Huntsville, AL; EnPower, Inc., Indianapolis, IN; Eos Energetics, Inc. dba Estes Energetics, Penrose, CO; Epsilon Systems Solutions, Inc., San Diego, CA; Equispheres, Inc., Kanata, CANADA; Erg Bio, Inc., Dublin, CA; Eutectix LLC, Troy, MI; Evans & Chambers Technology LLC, Arlington, VA; EverGlade Consulting LLC, Charleston, SC; Exquadrum, Inc., Victorville, CA; EZ—A Consulting LLC, Bel Air, MD; Fastcom Supply Corp., Franklin Lakes, NJ; Fastech LLC, Danville, VA; Faxon Machining LLC, Cincinnati, OH; Federal Foundry LLC, Arlington, VA; Fermowrx Holdings LLC, Columbus, GA; Fibre-Tech USA, Stamford, CT; Fidelity Machine and Mould Solutions, Calgary, CANADA; Field Propulsion Technologies, Inc., Aurora, CO; Finless Foods, Emeryville, CA; Firehawk Aerospace, Inc., Addison, TX; Firestorm Labs, Inc., San Diego, CA; First Phosphate Corp., Vancouver, CANADA; Forge Nano, Thornton, CO; FormAlloy Technologies, Inc., Spring Valley, CA; Fortune Minerals Limited, London, CANADA; Freeform Future Corp., Hawthorne, CA; Gamma Alloys, Inc., Valencia, CA; Gecko Robotics, Pittsburgh, PA; General Technologies, Inc., Melbourne Beach, FL; GKN AEROSPACE GTC LLC, Lake Worth, TX; GLC Technologies, Inc., Owens Cross Roads, AL; Global Circuit Innovations, Inc., Colorado Springs, CO; Globe Engineering Company, Inc., Wichita, KS; GLX Power Systems, Inc., Chagrin Falls, OH; GN Corporations, Inc., Airdrie, CANADA; Goodman Technologies LLC, Largo, FL; Google Public Sector LLC, Reston, VA; Green Edge Computing Corp., Vancouver, CANADA; GreenSight, Boston, MA; GreenSource Fabrication LLC, Charlestown, NH; HAAS, Inc., Chicago,

IL; Hanley Industries, Inc. dba Riverbend Energetics, Alton, IL; Hathr LLC, Springfield, VA; Heal R World LLC, Somerville, NJ; Helicon Chemical Company LLC, Orlando, FL; Honeywell International, Inc., Clearwater, FL; HRL Laboratories, Malibu, CA; Hughes Circuits, Inc., San Marcos, CA; Hypercomp Engineering, Inc., Brigham City, UT; Hythe Research LLC, Havre de Grace, MD; ICF Mercantile LLC, Warren, NJ; IE Workplace Solutions LLC, Spring, TX; IMT Partnership, Ingersoll, CANADA; Industrial Microbes, Inc., Alameda, CA; InnovateX Pty Ltd., Greenbank, AUSTRALIA; Innovative Technology International, Inc., Lynchburg, VA; International Business Machines Corp. (IBM), Bethesda, MD; International TechneGroup, Inc., Milford, OH; INV Associates LLC, Scarsdale, NY; Invariant Corp., Huntsville, AL; ISOLA USA Corp., Chandler, AZ; JAKTOOL LLC, Cranbury, NJ; Jayhawk Fine Chemicals Corp., Galena, KS; JetCo Solutions LLC, Grand Rapids, MI; Joe Gibbs Manufacturing Solutions LLC, Huntersville, NC; Kairos, Inc., California, MD; KEF Robotics, Pittsburgh, PA; Kennecott Utah Copper LLC, South Jordan, UT; Kennmetal, Inc., Rodgers, AR; KIHOMAC, Inc., Reston, VA; KoBold Metals Company, Berkeley, CA; Kognitiv Spark, Inc., Frederickton, CANADA; Kord Technologies LLC, Huntsville, AL; KVG LLC, Gettysburg, PA; L3HARRIS FUZING AND ORDNANCE SYSTEMS, Inc., Cincinnati, OH; Lacamas Laboratories, Portland, OR; LandFillter, Inc., Lake Wales, FL; Laurel Technologies Partnership dba. DRS Laurel Technologies, Johnstown, PA; Liberation Labs Holdings, Inc., Richmond, IN; Liberty Ion LLC, Houston, TX; Lithos Industries, Inc. dba Element3, Fort Worth, TX; Lumen Bioscience, Inc., Seattle, WA; Lumieres Adventure (2002), Inc., Beaconsfield, CANADA; Lux Precision Manufacturing LLC, Phoenix, AZ; Lygos, Inc., Berkeley, CA; M1 Composites Technology, Inc., Laval, CANADA; Magrathea Metals, Inc., San Francisco, CA; Mantel Technologies, Fort Collins, CO; Marcantonio Global LLC, Alexandria, VA; Materials Research & Design, Inc., Wayne, PA; MATSYS, Inc., Sterling, VA; MCILVENNA BAY OPERATING LTD., Vancouver, CANADA; McIntosh Technologies Consulting, Snohomish, WA; MeasuredRisk, Inc., Paeonian Springs, VA; Mentis Sciences, Inc., Warner, NH; Midwest Printed Circuit Services, Inc., Round Lake Beach, IL; Mighty Waves Energy, Inc., Gaithersburg, MD; Missouri University

of Science and Technology, Rolla, MO; Mistral, Inc., Bethesda, MD; Modular Genetics, Inc., Lincoln, MA; Moog, Inc., East Aurora, NY; MRL Materials Resources LLC, Xenia, OH; Munitions Industrial Base Task Force, Inc., Arlington, VA; Nammo Defense Systems, Mesa, AZ; NanoElectronic Imaging, Inc., Riverside, CA; National Center for Defense Manufacturing and Machining, Johnstown, PA; NBS Technology Consulting LLC, Jacksonville Beach, FL; Neo Performance Materials, Inc., Toronto, CANADA; New Dominion Enterprises, Inc., San Antonio, TX; New Trail Corp., Lincoln, MA; Next Rung Technology LLC, Somerville, MA; Nextfed Insights, Inc., Arlington, VA; NHanced Semiconductors, Inc., Batavia, IL; Nimbis Services, Inc., Oro Valley, AZ; Noble Supply & Logistics LLC, Boston, MA; Northrop Grumman Systems Corp.—Propulsion Systems, Corinne, UT; Northrop Grumman Systems Corp.—Mission Systems, Linthicum Heights, MD; Noveon Magnetics, Inc., San Marcos, TX; NRL & Associates, Stevensville, MD; NTS Technical Systems dba Element U.S. Space & Defense, Belcamp, MD; Numat Technologies, Inc., Skokie, IL; Numerica Corp., Fort Collins, CO; Nuvu Cameras, Inc., Montreal, CANADA; OLEDWorks LLC, Rochester, NY; Olles Applied Research LLC, Hilton, NY; OMP Logistics Corp., Paramus, NJ; Onego Bio, Inc., Palo Alto, CA; Optimax Systems, Inc., Ontario, NY; Ozark Integrated Circuits, Inc., Fayetteville, AR; P.W.R Performance Products Pty Ltd., Ormeau, AUSTRALIA; Pacific Scientific Energetics Materials Company (California LLC), Hollister, CA; Packet Digital LLC, Fargo, ND; Parts Life, Inc., Moorestown, NJ; PCC Rollmet, Inc., Irvine, CA; Perfect Day, Inc., Berkeley, CA; Perrarus Solutions, Inc., Newport News, VA; Phoenix Semiconductor Corp., Austin, TX; Pliant Energy Systems, Inc., Brooklyn, NY; Polemarchoi, Inc., Alexandria, VA; Powdermet, Inc., Euclid, OH; Pratt & Miller Engineering & Fabrication LLC, New Hudson, MI; Proteus Space, Inc., Los Angeles, CA; Pseudolithic, Inc., Santa Barbara, CA; Qorvo Texas LLC, Richardson, TX; Quality Manufacturing Company, Inc., Winchester, KY; Quickstep Technologies Pty Ltd., Bankstown Airport, AUSTRALIA; R.E. Darling Co., Inc., Tucson, AZ; Radiance Technologies, Inc., Huntsville, AL; Radiation Monitoring Devices, Watertown, MA; Rapid Innovation & Security Experts, Inc., Colorado Springs, CO; Rare Earth Salts Separations and Refining LLC, Beatrice, NE; Rare

Element Resources, Inc., Highlands Ranch, CO; Re:Build Manufacturing Solutions LLC, Framingham, MA; Recycle, Inc., New York, NY; ReElement Technologies LLC, Fishers, IN; Relativity Space, Long Beach, CA; ReLogic Research, Inc., Huntsville, AL; Resin Solutions LLC, Hermosa Beach, CA; Rhea Space Activity, Inc., Washington, DC; Ring of Fire Metals Pty Ltd, Toronto, CANADA; Rio Tinto Services, Inc., South Jordan, UT; Saab, Inc., East Syracuse, NY; Safaricross, Westerville, OH; Safire Technology Group, Inc., Tysons, VA; Salesforce COM, San Francisco, CA; San Diego Regenerative Medicine Institute, San Diego, CA; Santor Security, Inc., Montreal-Nord, CANADA; SAS MANUFACTURING LLC, Boulder, CO; Savor Foods Limited, San Jose, CA; SB Boron Corp., Bellwood, IL; Scale Free Solutions LLC, Keyser, WV; Science Spark, Encinitas, CA; Scope Technologies US, Inc., San Francisco, CA; Sensor Technology Ltd., Collingwood, CANADA; Silicon Technologies, Inc., Midvale, UT; Simulation Technologies, Inc., Huntsville, AL; Sintavia, Hollywood, FL; SkyWater Technology Foundry, Inc., Bloomington, MN; SMI Solutions, Inc., Huntington, WV; Soldier Systems D-MIL LLC, Gilsum, NH; Solugen, Inc., Houston, TX; Songhi Innovations, Fountain, CO; South Dakota School of Mines and Technology, Rapid City, SD; Southern Cross Aviation LLC, Fort Lauderdale, FL; Space Engine Systems, Inc., Edmonton, CANADA; SPARC Research LLC, Warrenton, VA; Spectral Sciences, Inc., Burlington, MA; SRL Metals Pty Ltd, Melbourne, AUSTRALIA; Steel Founders' Society of America, Crystal Lake, IL; Stephenson Endeavors Corp., Shreveport, LA; Stephenson Stellar Corp., Shreveport, LA; STI Electronics, Inc., Madison, AL; Stratolaunch LLC, Mojave, CA; STS International, Berkeley Springs, WV; Syndicate 708 LLC, Poway, CA; Synonym, Inc., New York, NY; Systima Technologies, Mukilteo, WA; Syzygy Integration LLC, Conshohocken, PA; T.G.V. Rockets, Inc., Washington, DC; Tandem Repeat Technologies, Inc., State College, PA; TechNext, Inc., Richmond, MA; Teck Resources Limited, Vancouver, CANADA; Terves LLC, Euclid, OH; Tex-Tech Coatings LLC, Kernersville, NC; Textum OPCO LLC, Belmont, NC; Thaler Machine Company LLC, Springsboro, OH; Thales Australia Ltd., Sydney Olympic Park, AUSTRALIA; The Better Meat Co., West Sacramento, CA; The Fynder Group, Inc., Chicago, IL; The Johns Hopkins University, Baltimore, MD; The

Saskatchewan Research Council, Saskatoon, CANADA; Thomas Global Systems LLC, Irvine, CA; Toray Composite Materials America, Inc., Tacoma, WA; Trusted Semiconductor Solutions, Brooklyn Park, MN; TTM Technologies, Inc., Santa Ana, CA; Tungsten West PLC, Plymouth, GREAT BRITAIN; UI Labs dba MxD USA, Chicago, IL; Umbra Lab, Inc., Santa Barbara, CA; Universal Technical Resource Services, Inc., Cherry Hill, NJ; University of British Columbia—Survive and Thrive Applied Research (STAR), Kelowna, CANADA; University of Florida, Gainesville, FL; Up Doppler Consulting LLC, Leonardtown, MD; Ursa Major Technologies, Inc., Berthoud, CO; Utron Kinetics, Manassas, VA; Valdos Consulting LLC, Coraopolis, PA; Valley Tech Systems, Inc., Folsom, CA; VanDeMark Chemical, Inc., Lockport, NY; VeriTX Corp., Amherst, NY; VerTechs Enterprise, Inc., El Cajon, CA; Veterans Legacy Health Alliance, Inc., Houston, TX; Virginia Tech Applied Research Corp., Arlington, VA; Visolis, Inc., Hayward, CA; Vulcan Elements LLC, Cambridge, MA; Wecoso, Inc., Huntington Beach, CA; Wichita State University, Wichita, KS; Wiley Companies, Coshocton, OH; WingXpand, Inc., St. Louis, MO; Wodin, Inc., Bedford Heights, OH; Wright Electric, Inc., Malta, NY; XR 2 LEAD LLC, Dumfries, VA; York laboratories LLC, York, PA; Zeteo Tech, Inc., Sykesville, MD; and ZymoChem, Inc., San Leandro, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DIBC intends to file additional written notifications disclosing all changes in membership.

On February 21, 2024, DIBC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 24, 2024 (89 FR 52508).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-20965 Filed 9-13-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical Technology Enterprise Consortium

Notice is hereby given that, on June 28, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Medical Technology Enterprise Consortium (“MTEC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Able Hands Rehabilitation PC, Old Bridge, NJ; Atlantic Diving Supply, Inc. dba ADS, Inc., Virginia Beach, VA; BC3 Technologies, Inc., Baltimore, MD; Bessel LLC, El Paso, TX; BioTechnique LLC, York, PA; Black Canyon Consulting LLC, Fairfax, VA; Bruder Consulting & Venture Group, Franklin Lakes, NJ; Burrell International Group, Washington, DC; Coagulo Medical Technologies, Inc., Auburndale, MA; Cresilon, Inc., Brooklyn, NY; Drul, Inc., Baltimore, MD; Dynocarida, Inc., Newton, MA; Emergency Dermal Solutions LLC, Durango, CO; EverGlade Consulting LLC, Houston, TX; Excentium, Inc., Reston, VA; FEICOM, Inc. dba Systems, Columbia, MD; Field Viewers, Inc., Austin, TX; FieldLine, Inc., Boulder, CO; GenAssist, Inc., St. Louis, MO; Glacier Support Service LLC, San Antonio, TX; iFyber LLC, Ithaca, NY; J & D Pharmaceuticals LLC, Monmouth Beach, NJ; Jakttool, Cranbury, NJ; KardioGenics, Inc., San Jose, CA; LifeRaft Drones, Inc., Fort Worth, TX; Mimosa Diagnostics, Inc., Toronto, CANADA; Mountain Biometrics, Salt Lake City, UT; Nano PharmaSolutions, Inc., San Diego, CA; Neuro42, Inc., San Francisco, CA; neuroFit, Inc., Mountain View, CA; Noxsano, Inc., Cincinnati, OH; NxTech, Inc., Attleboro, MA; Octapharma USA, Paramus, NJ; Okineo LLC, San Mateo, CA; Orthomod LLC, Dayton, OH; Overjet, Boston, MA; People Value Research, Ltd., Ipswich, UNITED KINGDOM; RxMP Therapeutics, Inc., Seattle, WA; Safi Biotherapeutics, Inc., Cambridge, MA; Sherpani LLC, Baltimore, MD; Shionogi, Inc., Florham Park, NJ; Signum Technologies, Inc., Radnor, PA; The Emmes Company LLC, Rockville, MD;

Trade and Investment Queensland, San Francisco, CA; TruGenomix Health, Inc., dba Polaris Genomics, Gaithersburg, MD; Unveil LLC, Cincinnati, OH; Ursus Medical Designs LLC, Pittsburgh, PA; and Vaxxas Pty, Ltd., Hamilton, AUSTRALIA, have been added as parties to this venture.

Also, ImmersiveTouch, Inc., Chicago, IL; Neuromersive, Inc., Fort Worth, TX; Precisio Biotix Technologies, Dover, DE; and Sepsis Scout, Inc., San Francisco, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTEC intends to file additional written notifications disclosing all changes in membership.

On May 9, 2014, MTEC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on April 2, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52090).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20967 Filed 9–13–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—America's DataHub Consortium

Notice is hereby given that, on June 28, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), America's DataHub Consortium (“ADC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ADACEN FEDERAL LLC, Albuquerque, NM; AT Worthy Technology, Fairfax, VA; Brightquery, Inc., Irvine, CA; Careplots, Inc., Malvern, PA; CAS a division of American Chemical Society, Columbus,

OH; Data Point LLC, Orange, NJ; Data Products LLC, Chicago, IL; Generative Medical, Inc., Palo Alto, CA; K8R Applications, Inc. dba Future Perfect Engineering, Seattle, WA; Node.Digital, Leesburg, VA; Omnicom Consulting Group, Inc., Tarrytown, NY; Polaron Technologies, Inc., Miamisburg, OH; Prism Lab at Cornell University, Ithaca, NY; and Vistra Communications LLC, Lutz, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADC intends to file additional written notifications disclosing all changes in membership.

On November 11, 2021, ADC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 22, 2021 (86 FR 72628).

The last notification was filed with the Department on April 4, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52092).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–20968 Filed 9–13–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–31]

Mary A. Vreeke, M.D.; Decision and Order

On February 13, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Mary A. Vreeke, M.D. (Respondent), of Oxnard, CA. OSC, at 1, 5. The OSC proposed the revocation of Respondent's DEA Certificate of Registration (Registration) No. FV3660037, alleging that Respondent's continued registration is inconsistent with the public interest. *Id.* at 1 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

A hearing was held before DEA Administrative Law Judge Paul E. Soeffing (the ALJ), who, on October 19, 2023, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD). The RD recommended that Respondent's Registration be suspended for six months, and then reinstated with restrictions to ensure that Respondent

remains sober and continues with her current treatment program.¹ RD, at 27. Neither party filed Exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the ALJ's credibility findings,² findings of fact, and conclusions of law, and clarifies and expands upon portions thereof herein. However, the Agency has determined that revocation is the appropriate sanction based on the egregiousness of Respondent's conduct, her recidivism, and the Agency's interests in deterring intentional violations of the Controlled Substances Act (CSA).

I. Findings of Fact

Respondent is an anesthesiologist currently practicing at St. John's Hospital in Oxnard, California. Respondent testified that she has a substance abuse disorder that began with abusing alcohol in her mid-30s. RD, at 18; Tr. 234–35.³ Respondent later began abusing zolpidem⁴ and diazepam⁵ which she obtained without a prescription either from a friend or by going into Mexico. Tr. 235. Respondent was arrested and convicted in 2009 for

¹ The restrictions that the ALJ recommends imposing on Respondent's registration require her to: (1) limit her controlled substance administering, prescribing, and dispensing to the practice of anesthesiology; (2) comply with the terms of the Medical Board of California's (MBC's) Stipulated Interim Order imposing restrictions on her Registration; (3) comply with the terms of her probation with the MBC and refrain from seeking early termination of her probation; (4) notify DEA's Los Angeles Field Division of any action taken against her license and immediately surrender her Registration if her California medical license is suspended or revoked; (5) remain in monitoring for substance abuse and submit to regular urine drug screens; (6) provide DEA with copies of all quarterly reports issued by her practice monitor; (7) maintain a detailed record of controlled substances prescribed, administered, or dispensed; (8) report all activity involving Schedule II controlled substances to DEA on a monthly basis; (9) allow DEA personnel to enter her registered location during normal business hours without prior notice or a warrant. RD, at 42–43.

² The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment with respect to each of the witnesses' credibility. RD, at 4–23.

³ The Agency agrees with the ALJ that Respondent's testimony was “genuine and generally consistent,” despite Respondent having a significant personal interest in the outcome of these proceedings. RD, at 23. The ALJ found that “to the extent that [Respondent's testimony] differs from the testimony of other testifying witnesses, [he would] consider her personal interest in this case, and [he would] give her testimony the weight that it deserves in light of other evidence and testimony presented during the hearing.” *Id.* The Agency agrees with the amount of weight that the ALJ afforded Respondent's testimony.

⁴ Zolpidem is a Schedule IV controlled substance sold under the brand name Ambien. The generic name (zolpidem) is used in this decision.

⁵ Diazepam is a Schedule IV controlled substance sold under the brand name Valium. The generic name (diazepam) is used in this decision.

transporting zolpidem and diazepam across the United States border with Mexico. RD, at 18; Tr. 235–36. Respondent testified that she transported drugs across the border on approximately ten occasions. RD, at 18 n.25; Tr. 237. In 2013, Respondent was confronted by her employer regarding diversion of controlled substances, and she admitted to diverting fentanyl and midazolam for personal use. RD, at 18; Tr. 239–40.

After admitting to diversion in 2013, Respondent entered treatment at the Loma Linda behavioral unit, and then moved to a 95-day inpatient program at the Betty Ford Center. RD, at 18; Tr. 240. The Medical Board of California (MBC) required Respondent to participate in a recovery program for one year before formally putting her on probation. RD, at 18; Tr. 241–42. This program included undergoing monitoring with the Pacific Assistance Group (PAG),⁶ attending PAG support meetings twice weekly, attending Alcoholics Anonymous (AA) meetings, getting an AA sponsor, engaging in individual therapy, and attending meetings and programming through Betty Ford. RD, at 18; Tr. 240–41.

After a year of monitoring, the MBC and Respondent reached an agreement that resulted in restrictions being placed on Respondent's medical license for seven years. RD, at 18; Tr. 242–43. The conditions included “all of the conditions that [she] was currently doing and then a few more.” RD, at 18; Tr. 243, 246–47; RX 2. Respondent testified that she was “100 percent” compliant with the terms of her probation. RD, at 19; Tr. 247–48. After approximately four years on probation, her probation agent suggested that she apply for early termination. *Id.* Respondent testified that she delayed her application for early termination because she was very comfortable in the routine that she had developed with PAG and AA, and she felt safe having their support. RD, at 19; Tr. 250–51. However, Respondent eventually applied for early termination, and her probation terminated on December 31, 2020. RD, at 19; Tr. 249, 252; RX 4.

During the time that Respondent was on probation with the MBC, she also entered into a Memorandum of Agreement (MOA) with DEA that allowed her to retain authority in Schedules II–V as long as she abided by the MBC's restrictions, which included limiting her registration to prescribing

and administering controlled substances in a perioperative or obstetric setting. RD, at 19; Tr. 252–53; RX 3. Respondent testified that she fully complied with the DEA restrictions, which terminated in December of 2020 along with her MBC probation. RD, at 19; Tr. 254–56.

In January of 2021, less than 30 days after the MBC's and DEA's restrictions were lifted, Respondent relapsed and resumed diverting controlled substances from her employer for personal use.⁷ RD, at 19; Tr. 256–57. Respondent's relapse lasted from January 2021 to March 2021, and she recalled diverting fentanyl, midazolam, and hydromorphone on at least ten occasions for intravenous use. RD, at 19; Tr. 257–58. Respondent testified that she diverted mostly “waste” controlled substances that were not used during a procedure and should have been discarded.⁸ *Id.* Respondent deceived the nurses by telling them that she was disposing of the “waste” substances, when instead she was disposing of saline. *Id.* On other occasions, Respondent overprescribed controlled substances to patients, or falsely documented that she had administered a controlled substance to a patient, and retained the excess for herself.⁹ RD, at 19–20; Tr. 300. Respondent used the diverted controlled substances at home or in the call room where she worked at St. John's hospital. RD, at 20; Tr. 258. On March 26, 2021, Respondent was found unconscious in the hospital bathroom after having unintentionally overdosed on fentanyl, midazolam, and propofol that she had falsely

⁷ Respondent testified that the circumstances that precipitated her relapse included stress related to the second wave of the COVID-19 pandemic, wanting to spend more time with her family, sporadic shifts, and mounting anger and resentment towards her boss relating to his scheduling decisions. RD, at 20; Tr. 258–59, 296–97. Respondent also testified that around the time of her relapse, she was attending AA meetings via Zoom video teleconferencing, not in person, due to COVID-related stress. RD, at 20; Tr. 259. Respondent testified that she “basically had no accountability” with the lack of a “solid” AA program. RD, at 20; Tr. 259–60. Respondent testified that on the day of her overdose, she received a text message from her boss that he would not give her future shifts if she did not cancel a long-scheduled vacation. RD, at 20–21; Tr. 260–61, 298. Additionally, her last case of the day involved a “code crimson,” where hospital staff must engage in a hasty blood transfusion. RD, at 21; Tr. 299.

⁸ Respondent testified that she never took medication that was necessary to treat a patient. RD, at 19; Tr. 300.

⁹ Respondent admitted that overprescribing controlled substances to a patient and diverting the excess could have an impact on the actions of another doctor reviewing the patient's file at a later time. RD, at 20; Tr. 335–36. However, she testified that it is standard practice for anesthesiologists to titrate the dose until the desired respiratory rate is achieved, which would mitigate the potential harms of overprescribing. *Id.*

documented that she had given to a patient during her shift.¹⁰ RD, at 20–21; Tr. 298–300.

Respondent's testimony about the restrictions that the MBC placed on her registration after her 2021 relapse is summarized below. *See infra* III.B.

II. Discussion

A. The Five Public Interest Factors

Under the CSA, “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37,507, 37,508 (1993).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1), the Government's evidence in support of its *prima facie* case for revocation of

¹⁰ DEA Diversion Investigator Yekaterina Blissard (DI) testified that DEA received an anonymous tip in August of 2022 alleging that Respondent was found unconscious in a hospital bathroom in March of 2021 “with an IV still attached to her hand” and controlled substances on her person. RD, at 4; Tr. 16.

DI's testimony primarily focused on the introduction of the Government's documentary evidence and her interactions with Respondent following the anonymous tip. RD, at 5. The Agency agrees that DI's testimony was “generally consistent,” that “there was no indication that she harbors any animosity towards the Respondent,” and that she has no personal stake in this proceeding. *Id.*

⁶ PAG is a support group for “impaired healthcare professionals” that is “designed to help healthcare professionals provide treatment that is safe for the public [and] that is ethical and within the bounds of each of their practices.” RD, at 6; Tr. 55–56.

Respondent's registration is confined to Factors B and D. RD, at 26–31; *see also id.* at 26 n.33 (finding that Factors A, C, and E do not weigh for or against revocation).¹¹ Having reviewed the record and the RD, the Agency adopts the ALJ's analysis, and agrees that the Government's evidence satisfies its *prima facie* burden of showing that Respondent's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4); RD, at 25–31.

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.*, 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21,156, 21,162 (2022). In the current matter, the Government has alleged that Respondent violated numerous federal and state laws regulating controlled substances. OSC, at 1–2. Specifically, federal law requires that "[a] prescription for a controlled

substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a).¹² California law provides that "no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person . . . not under his or her treatment for a pathology or condition." Cal. Health & Safety Code § 11154(a). California law also provides that "no person shall prescribe, administer, or furnish a controlled substance for himself." *Id.* at § 11170. Further, California law defines unprofessional conduct to include "[p]rescribing, dispensing, or furnishing [controlled substances] without an appropriate prior examination and a medical indication" and "commi[ting] [] any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon." Cal. Bus. & Prof. Code §§ 2242(a), 2234.

In the current matter, Respondent admitted that she diverted controlled substances for her own personal use on at least ten occasions between January 2021 and March 2021. The parties stipulated that these acts of diversion occurred and that Respondent's conduct weighs against her under Factors B and D.¹³ As Respondent's conduct displays clear violations of the federal and state regulations described above, the Agency agrees with the ALJ and finds that Respondent repeatedly violated federal and state law relating to controlled substances. RD, at 41. Accordingly, the Agency agrees with the ALJ and finds that Factors B and D weigh in favor of revoking Respondent's registration, and thus finds Respondent's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1).

III. Sanction

Where, as here, the Government has established sufficient grounds to revoke Respondent's registration, the burden shifts to Respondent to show why she can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18,882, 18,904 (2018). When a registrant has committed

acts inconsistent with the public interest, she must both accept responsibility and demonstrate that she has undertaken remedial measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62,316, 62,339 (2012). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33,738, 33,746 (2021).

A. Acceptance of Responsibility

Here, the Agency agrees with the ALJ that Respondent unequivocally accepted responsibility for her conduct and expressed genuine remorse for her actions. RD, at 31–35. Respondent fully accepted responsibility for the allegations outlined in the OSC, as well as her misconduct in 2009 and 2013, and agreed that she violated state and federal law. *Id.* at 22, 33; Tr. 332, 327. Respondent testified that, for her, accepting responsibility means making "living amends" and not "minimizing" her actions. RD, at 33; Tr. 345–46. She feels "profound regret" for her relapse, but she is "trying to use [that regret] as a tool for good." RD, at 22; Tr. 326–27. Respondent testified that her actions were egregious because she was dishonest, she "violated the trust of patients and nurses," she "potentially" hurt patients, she knew better, and she failed to use her available resources to get help. RD, at 23; Tr. 346. Respondent's willingness to reflect on her battle with addiction in a public forum is admirable, and the Agency agrees with the ALJ that Respondent unequivocally accepted responsibility for her misconduct. RD, at 31–35.

B. Remedial Measures

Having found that Respondent has unequivocally accepted responsibility for her conduct, the Agency considers whether Respondent has implemented sufficient remedial measures to demonstrate that she will not engage in future misconduct and can be trusted with a registration. *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 463 (2009). The Agency has acknowledged that "[i]n self-abuse cases, . . . successful rehabilitation efforts are an important consideration in determining whether a respondent can be trusted with a registration." *Trenton F. Horst, D.O.*, 80 FR 41,079, 41,091 (2015); *see also Abbas E. Sina, M.D.*, 80 FR 53,191, 53,201

¹¹ Respondent argues that Factor A weighs in her favor because the MBC considered her misconduct and put her on probation rather than revoking her state medical license. ALJ Exhibit (ALJX) 29, at 29. Prior Agency decisions have considered two forms of recommendations from state licensing entities: "(1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority . . . , which explicitly addresses the granting or retention of a [Registration]; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC." *John O. Dimowo, M.D.*, 85 FR 15,800, 15,810 (2020). Here, the MBC has not made a direct recommendation to DEA, but the MBC has considered the same misconduct alleged in the OSC and entered into a Stipulated Interim Order (Interim Order) with Respondent substantially restricting her registration. The Interim Order is not a final decision by the MBC, it does not contain final legal conclusions or factual findings, and it clarifies that any admissions regarding Respondent's conduct are not admissible in administrative proceedings. RX 12, at 3 ("The parties stipulate that the admissions made by Respondent as to the alleged conduct . . . are solely for the purpose of this stipulated Interim Order Imposing License Restrictions only, and shall not be used in any other proceeding before the [MBC], and shall not be admissible in any other criminal, civil, and/or administrative proceeding."). Moreover, the Order does not analyze whether Respondent's continued registration is consistent with the public interest under the CSA, which is a determination that the Agency must make in deciding whether to sanction a registrant. *Id.* at 15,810 (citing *Ajay S. Ahuja, M.D.*, 84 FR 5479, 5490 (2019)). Thus, the Agency finds that this Order is not determinative.

Regarding Factor C, the Agency does not consider Respondent's 2009 felony conviction as part of the public interest analysis because the Government did not allege that the conviction was a basis for revocation. RD, at 26 n.33. Finally, regarding Factor E, the absence of evidence of "other conduct which may threaten the public health and safety" does not militate for or against a finding that Respondent's registration is inconsistent with the public interest. *Id.*

¹² The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan v. United States*, 142 S. Ct. 2370 (2022) (decided in the context of criminal proceedings).

¹³ RD, at 2; Stipulation 3, 4 ("[Respondent] acknowledges that her conduct reflects negative experience in dispensing with respect to controlled substances in violation of 21 U.S.C. 823(g)(1)(B)."), 5 ("[Respondent] failed to comply with applicable federal and state laws relating to controlled substances in violation of 21 U.S.C. 823(g)(1)(D)."), 6.

(2015) (“[T]he risk of relapse becomes critical in determining what steps are warranted when determining the public interest.”)

Respondent testified at length about the measures that she has taken, and will continue to take, to remain sober. These measures were implemented after Respondent was caught diverting from her employer in 2021, and they are mandatory under the terms of her agreements with the MBC and/or St. John’s Hospital (her current employer), which diminishes their weight as remedial evidence.¹⁴ However, the Agency appreciates that the measures that Respondent is required to take under her agreements with the MBC and St. John’s hospital are extensive, leaving little room for Respondent to implement additional voluntary measures. The Agency also appreciates that Respondent has made a sincere commitment to remaining sober for herself, and not just for her employer. Tr. 341. Thus, the Agency considers Respondent’s remedial measures in determining whether Respondent can be trusted with a DEA registration.

Summary of Respondent’s Remedial Measures

After her overdose in March of 2021, Respondent was put on a medical leave of absence and began a new 30-day inpatient treatment program at the Betty Ford Center. RD, at 21; Tr. 302–04. Following her discharge from Betty Ford in May of 2021, she completed another three-month outpatient addiction program. RD, at 21; Tr. 304–05, 307–09.

On August 2, 2023, Respondent entered into a restrictive agreement with the MBC (the 2023 MBC Agreement) that allows her to continue practicing anesthesia as long as she: (1) abstains from using drugs and alcohol, (2) enlists a licensed physician to monitor her at work, (3) remains enrolled in the PAG program, (4) attends weekly substance abuse support group meetings, (5) receives psychotherapy, (6) submits to

regular biological fluid testing (drug testing), and (7) notifies all of her employers about the MBC Agreement. RD, at 21–22; Tr. 323–24; RX 12, at 4–10. The MBC agreement allows Respondent to order, prescribe, and dispense controlled substances in a perioperative setting. RD, at 22; Tr. 324; RX 12 at 4.

Respondent testified that she currently attends AA meetings five times per week and PAG meetings twice per week (more than is required by the MBC Agreement). RD, at 21; Tr. 309. Respondent has completed the AA 12-Step Program and remains in the “maintenance steps,” 10, 11, and 12.¹⁵ RD, at 21; Tr. 309.

Respondent’s return to work following her relapse began in November of 2021 at UrgentMed urgent care, where she worked through the spring of 2023.¹⁶ RD, at 21; Tr. 168, 315. In August of 2022, Respondent resumed practicing as an anesthesiologist at St. John’s Hospital, where her continued employment is conditioned upon compliance with a Return to Practice Agreement (the St. John’s Practice Agreement). RD, at 21; Tr. 315–18; RX 9. In addition to the requirements outlined above in the 2023 MBC Agreement, the St. John’s Practice Agreement also requires Respondent to continue treatment with naltrexone (or an equivalent medication), to notify the hospital of any outside employment, and to maintain records of controlled substances ordered, prescribed, dispensed, administered, or possessed. RX 9, at 1–3. The St. John’s Practice Agreement also included restrictions that remained in place for a limited period of time, including proctoring for at least three cases, limitations on the number of shifts and hours worked, and evaluation by a board-certified addiction physician.¹⁷ *Id.* Respondent is

currently working a full 40-hour per week schedule. RD, at 21; Tr. 318–19.

Respondent offered eight witnesses to testify about Respondent’s commitment to remaining sober, her success in remaining sober from 2013 to 2020 while being monitored by PAG, and their belief that there is a high likelihood that Respondent will remain sober under her current monitoring program. RD, at 6–17; Tr. 50–217.

Tracy Zemansky, Ph.D., is a clinical psychologist and one of seven practitioners who owns and operates PAG.¹⁸ RD, at 6; Tr. 50, 55–56. Dr. Zemansky was accepted as an expert in psychology, specializing in the field of physician impairment, evaluation, and recovery. RD, at 6; Tr. 57–58. Dr. Zemansky has known Respondent since November of 2013, when Respondent initially enrolled in PAG after being caught diverting drugs from her employer the first time. RD, at 6; Tr. 58, 61. Dr. Zemansky has also been involved in monitoring Respondent since her relapse in 2021.

Dr. Zemansky testified that, in her expert opinion, Respondent remains safe to practice as a physician and safe to prescribe controlled substances. RD, at 9; Tr. 84–85, 94, 107–08. Dr. Zemansky testified that the stressors that led to Respondent’s relapse in 2021 are a new focus of her recovery plan, and that her commitment to recovery is

Golden testified that he initially determined that Respondent was fit to work twenty or thirty hours a week, because she has a “propensity to have problems when she [feels] overwhelmed.” RD, at 12; Tr. 124–29. After additional meetings with Respondent, Dr. Golden has increased his recommended limitation to forty hours per week. RD, at 12; Tr. 130. Dr. Golden agreed that even physicians being monitored can relapse, but testified that relapse is less likely the longer a physician is in recovery and subject to monitoring. RD, at 12; Tr. 132–33. Dr. Golden further testified that Respondent “stands out [to him] as someone who is very committed” to her recovery program with a “willingness to continue with recovery.” RD, at 12; Tr. 135–36. Dr. Golden expressed support for the Respondent’s continued DEA registration and medical practice “so long as she is being monitored under the terms imposed by the Medical Board of California.” RD, at 12; Tr. 137.

The Agency agrees with the ALJ that Dr. Golden’s testimony was “was genuine and generally consistent, though the bases for his recommendations and conclusions were not addressed in much detail.” RD, at 12. The ALJ determined that Dr. Golden’s testimony was “credible and [he would] give it appropriate weight.” *Id.* The Agency agrees with the amount of weight that the ALJ afforded Dr. Golden’s testimony.

¹⁸ The Agency agrees with the ALJ that Dr. Zemansky “presented credible testimony that was internally consistent and generally logically persuasive” and that she “presented an objective analysis” despite her “close therapeutic relationship with the Respondent.” RD, at 11. The Agency also agrees with the ALJ that Dr. Zemansky’s testimony is entitled to significant weight. *Id.*

¹⁴ The Agency has held that remedial measures are given “limited-to-no-weight” when they are implemented after enforcement begins. *See, e.g., Morris & Dickson Co., LLC*, 88 FR 34,523 (2023) (citing *Mireille Lalanne, M.D.*, 78 FR 47,750, 47,777 (2013) (“The Agency has recognized that a cessation of illegal behavior only when ‘DEA comes knocking at one’s door,’ can be afforded a diminished weight borne of its own opportunistic timing.”); *Southwood Pharmaceuticals, Inc.*, 72 FR 36,487, 36,503 (2007) (giving no weight to respondent’s “stroke-of-midnight decision” to cease supplying suspect pharmacies with controlled substances and to employ a compliance officer). This principle applies in even greater force here, where the remedial measures that Respondent has implemented appear to be mandatory under an agreement with the state medical board rather than voluntary.

¹⁵ Respondent described the “maintenance steps” as steps to avoid complacency by focusing on recognition of present feelings and emotions, faith and meditation, and outreach to others in recovery and service. RD, at 21; Tr. 309–10.

¹⁶ The Medical Director of UrgentMed, Dr. Peter Chung, testified that there were no complaints about Respondent’s treatment of patients and she received only positive feedback from patients and colleagues. RD, at 14; Tr. 175. The Agency agrees with the ALJ that Dr. Chung’s testimony was “genuine and generally consistent, though the subject matter of his testimony is of limited relevance to these proceedings.” RD, at 13. The ALJ stated that “where relevant[,] [he would] give [Dr. Chung’s] testimony the weight that it deserves in light of other evidence and testimony presented during the hearing.” *Id.* The Agency agrees with the amount of weight that the ALJ afforded Dr. Chung’s testimony.

¹⁷ Dr. James Golden, a California-licensed physician who is Board certified in addiction medicine, evaluated Respondent following her relapse in 2021. RD, at 11–12; Tr. 124–26. Dr.

sincere. RD, at 7–8, 11; Tr. 80, 101–04. Although Dr. Zemansky agreed that new and unforeseen stressors could cause a future relapse, she opined that having already gone through an extremely stressful situation resulting in relapse, Respondent now has additional tools that will help her remain sober. RD, at 11; Tr. 104–05. Dr. Zemansky testified that Respondent is being monitored closely by St. John's well-being committee, and that PAG provides St. John's with monthly compliance reports. RD, at 9; Tr. 81–82. Dr. Zemansky testified that Respondent has not had any positive drug tests or missed any appointments since resuming monitoring with PAG, and that Respondent has been sober since March of 2021. RD, at 7–8; Tr. 69–72, 74. Dr. Zemansky also highlighted that Respondent was fully compliant with her probation during her initial eight years of monitoring with PAG from 2013 to 2020, and that she “went above and beyond what was required in terms of her attitude . . . [and] involvement in outside recovery.” RD, at 6–7, 9; Tr. 62–64; Tr. 84–85, 99–100.

Dr. Zemansky opined that physicians in monitoring are “actually safer than physicians” who are not being monitored, because “we don't know what [the unmonitored physicians] are doing.” RD, at 9; Tr. 81–82. However, Dr. Zemansky acknowledged that there is “always” a chance for relapse, and that relapse can occur even with monitoring, though rare. RD, at 9; Tr. 87–88.

Dr. Zemansky testified that she supported Respondent's request for early termination of her probation in December of 2020. RD, at 9–10; Tr. 86–87, 105–06. At that time, Dr. Zemansky offered testimony on Respondent's behalf in front of the MBC stating that she believed that Respondent had an excellent prognosis for continued success and that she had no reservations about terminating Respondent's probation. Tr. 86–87. At the DEA hearing, Dr. Zemansky acknowledged that she regrets her decision to support the removal of all monitoring requirements in December of 2020, and she characterized Respondent's relapse in January of 2021 as “brief but quite severe.” Tr. 87, 106–07. Dr. Zemansky testified that she “wish[es] that [she] had been able to foresee differently.” Tr. 107.

Dr. W. Lee Wan,¹⁹ a California-licensed ophthalmologist and Chair of

the Well-Being Committee at St. John's, testified that the Well-Being Committee has assumed an active role in monitoring Respondent since her 2021 relapse.²⁰ RD, at 16; Tr. 205–06. Dr. Wan testified that Respondent has remained compliant with the St. John's Practice Agreement. RD, at 17; Tr. 215. Dr. Wan supports Respondent's continued ability to practice as an anesthesiologist and continued DEA registration, and testified that he believes Respondent remains fit for duty. RD, at 17; Tr. 217, 221–22. However, Dr. Wan agreed that there is always a chance that an “addicted physician” will relapse. Tr. 217–18.²¹

Based on this evidence, the ALJ found that Respondent had “produced significant, un rebutted evidence

deserves in light of other evidence and testimony presented during the hearing.” *Id.* The Agency agrees with the amount of weight that the ALJ afforded Dr. Wan's testimony.

²⁰ Dr. Wan testified that Respondent was not being formally monitored by the Well-Being Committee when she relapsed in 2021. RD, at 16; Tr. 206–07. Dr. Wan is not aware of any patient complaints or other issues in the seven or eight years that Respondent worked at St. John's prior to relapsing. *Id.*

²¹ Respondent offered the testimony of four additional colleagues and friends who support the continuation of her registration: Kathleen Van Daalen Wetter, Kimrae McDonald, Dr. Karen Simon, and Dr. Bahram Namdari. Ms. Wetter has been Respondent's AA sponsor for the past two years and interacts with her daily. RD, at 13. Ms. Wetter believes that Respondent has the “perfect attitude needed to continue to stay clean and sober,” and “[s]he remains open, willing, and honest about her recovery.” *Id.*; Tr. 147. Ms. McDonald, a nurse who works with Respondent at St. John's, testified that Respondent has a stellar reputation and she unequivocally supports Respondent's ability to continue practicing as an anesthesiologist. RD, at 13; Tr. 150–159. Dr. Simon, another colleague at St. John's, testified that she has known Respondent for 15 years, but was unaware of Respondent's substance abuse history until these proceedings. RD, at 15; Tr. 193–97. Dr. Simon testified that since 2021 she has not observed Respondent appear impaired while at work, and that she and Respondent have “an excellent working relationship.” RD, at 15; Tr. 198. Dr. Simon testified that Respondent's practice at St. John's is very busy and regularly involves emergency care, and that Respondent's performance is “excellent” under those stressful conditions. RD, at 15–16; Tr. 199. Dr. Namdari, a California-licensed anesthesiologist, testified that he has worked with Respondent at St. John's since 2015 and interacts with her nearly every workday as her workplace monitor. RD, at 15; Tr. 183–89. Dr. Namdari testified that since returning to work at St. John's following her relapse, Respondent has had no issues, she is “doing a great job,” and “patients are happy.” RD, at 15; Tr. 188. Dr. Namdari supported Respondent's ability to continue administering controlled substances with monitoring in place. RD, at 15; Tr. 189.

The Agency agrees with the ALJ that the testimony of Ms. Wetter, Ms. McDonald, Dr. Simon, and Dr. Namdari was “genuine and generally consistent[,] though the subject matter of [their] testimony is of minimal relevance to these proceedings.” RD, at 13–16. The Agency agrees with the amount of weight that the ALJ afforded these witnesses' testimony.

showing that she is capable of complying with the terms of licensing restrictions and monitoring,” and concluded that the Agency can trust Respondent to handle controlled substances as long as these rehabilitative measures remain in place. RD, at 35, 38–39. The ALJ did observe, however, that the length of time between the end of Respondent's probation in December of 2020 and her relapse in January of 2021 was “especially concerning.” *Id.* at 39.

The Agency agrees with the ALJ that the likelihood of Respondent relapsing is reduced if Respondent remains under strict monitoring. However, the record in this case establishes that relapse is always possible.²² Respondent's expert witness, Dr. Zemansky, acknowledged this, and even admitted that she did not foresee Respondent's severe relapse in 2021. Thus, in assessing the adequacy of Respondent's remedial measures, the Agency must weigh the reduced risk of relapse against the serious and unmitigable risk that Respondent poses to the public if she relapses on the job again. Respondent works with patients while they are heavily sedated or unconscious—in their most vulnerable state. The practice of anesthesia requires careful focus and continuous monitoring, as Respondent testified that medication is titrated during a procedure in small doses until the desired respiratory rate is achieved. RD, at 20 n.30; Tr. 335–39. During Respondent's previous episodes of abuse and diversion, she treated patients for months at a time while under the influence, deceiving her colleagues and falsifying patient records to obtain more drugs. Although there was no evidence demonstrating that Respondent harmed any patients during her previous relapses, Respondent concedes that her conduct put patients at risk and could have caused harm. RD, at 20; Tr. 327–28, 337.

The Agency finds that Respondent has presented substantial evidence of remedial measures and acknowledges that Respondent has taken admirable steps towards continued sobriety; but continued sobriety is not guaranteed. Moreover, the agency has long held that “past performance is the best predictor of future performance.” *ALRA Labs, Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995). Here, where Respondent had a “severe” relapse one month after the prior

²² Several of Respondent's witnesses acknowledged that relapse is possible (although rare) when physicians are being monitored for substance abuse. *See* RD, at 9–10; Tr. 87–88, 106–07 (Dr. Zemansky's testimony); *see also* RD, at 12; Tr. 132–33 (Dr. Golden's testimony); RD, at 17; Tr. 217–18 (Dr. Wan's testimony).

¹⁹ The Agency agrees with the ALJ that Dr. Wan's testimony was “generally credible and consistent.” RD, at 17. The ALJ found that, “where relevant [he would] give his testimony the weight that it

restrictions to her controlled substances authority were lifted, the Agency is not confident that it can trust Respondent with the continuation of her registration even with the remedial measures in place.

C. Deterrent Effect and Egregiousness

Acceptance of responsibility and remedial measures are assessed in the context of the “egregiousness of the violations and the [DEA’s] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.” *Daniel A. Glick, D.D.S.*, 80 FR 74,800, 74,810 (2015); *OakmontScript Limited Partnership*, 87 FR 21,546, 21,545 (2022). Here, although Respondent accepted responsibility and expressed a genuine commitment to ensuring that she does not relapse again, she has a long history of violating federal and state laws related to controlled substances. DEA has shown leniency in the past by allowing Respondent to retain her registration after her previous offenses, but Respondent reverted back to intentionally diverting from her employer less than 30 days after DEA’s and the MBC’s restrictions were lifted, and she continued diverting for several months until she was caught. Thus, the Agency finds that considerations of specific deterrence weigh in favor of revocation. The Agency also finds that the interests of general deterrence support revocation. A decision to maintain Respondent’s registration after repeated behavior of intentionally diverting from her employer and violating other controlled substance laws would send a message to the registrant community that repeated acts of intentional diversion can be overlooked or excused as long as the Respondent accepts responsibility when confronted.

The egregiousness of Respondent’s conduct also supports a sanction of revocation.²³ Respondent engaged in

prolonged and repeated acts of intentional diversion, involving deception, theft, and falsifying patient records, that “strike[] at the CSA’s core purpose.” *Samuel Mintlow, M.D.*, 80 FR 3630, 3653 (2015). In this case, the Agency believes that revocation of Respondent’s registration would encourage the general registrant community to seek help as soon as possible upon experiencing substance abuse problems, in order to avoid violating the Agency’s trust by engaging in repeated and intentional diversion.

Respondent agrees that her misconduct was egregious, but she cites in her Post-Hearing Brief to several cases where the Agency has allowed physicians to retain restricted registrations despite intentional and egregious violations of the CSA. ALJX 29, at 34–36. However, most of the cases that Respondent cites were decided more than 20 years ago, before the opioid epidemic surged.²⁴ The Agency has since departed from some of its more lenient sanction policies, citing the need to protect the public from abuse and diversion. For example, in *Jayam Krishna-Iyer*, the Agency noted that “[b]ecause of the grave and increasing harm to public health and safety caused by the diversion of prescription controlled substances,” it would no longer allow registrants who intentionally diverted controlled substances to retain their registrations if they declined to accept responsibility. *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 463 (2009). In *Southwood and Gaudio*, the Agency further clarified that it would consider the deterrent effect of a potential sanction, in addition to requiring registrants to accept responsibility and demonstrate that they could be trusted with a registration. *Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36504 (2007); *Joseph Gaudio, M.D.*, 74 FR 10083, 10094 (2009). Although the Agency has issued decisions within the past decade maintaining or granting restricted

registrations notwithstanding intentional and egregious violations of the CSA,²⁵ the Agency considers the unique facts of each case in determining the appropriate sanction. In this case, there are significant factors weighing against continuing Respondent’s registration, including the recurrent nature of her misconduct, the severity of her relapse, the substantial danger that she will pose to the public if she relapses again, the high level of deception involved in her diversion, and the speed with which Respondent resumed her unlawful behavior after DEA and the MBC lifted their restrictions in December of 2020.

Respondent also argues that revocation is not necessary for purposes of deterrence, and that revoking Respondent’s registration would “send[] the wrong message to impaired physicians” that “if you are open, honest, and admit to abusing or diverting controlled substances and seek help, you may have your DEA registration revoked.” ALJX 29, at 36. However, this record establishes that DEA did show leniency to Respondent previously, in 2013, which should give addicted registrants hope that by accepting responsibility and remedying their actions they too may be shown leniency for CSA violations. Rather, this decision is meant to encourage recovering registrants to continue to follow the CSA and avoid diversion even after DEA lifts any restrictions. Moreover, Respondent did not admit to abusing or diverting controlled substances and seek help until after she was confronted by her employer in both 2013 and 2021. If she had immediately sought help after relapsing in January of 2021, rather than diverting from her employer for several months until getting caught, Respondent’s argument regarding deterrence may have been more persuasive.

In sum, Respondent has not offered sufficient credible evidence on the record to rebut the Government’s case for revocation and Respondent has not demonstrated that she can be entrusted

²³ The ALJ concluded that Respondent’s conduct was egregious, but found that there were two factors that mitigated the egregiousness: first, that Respondent’s addiction problems “greatly impacted her decision-making leading to her deceptive actions,” and second, that the record is devoid of evidence that Respondent directly harmed her patients. RD, at 37–38. The Agency agrees that the first factor could be mitigating in certain circumstances, but finds that the weight of the evidence supports a sanction of revocation, as discussed throughout this Order. Regarding the second factor, the Agency does not consider the lack of evidence of harm to be a mitigating factor because of the significant risk to public health and safety that Respondent posed while treating patients under the influence. The Agency has repeatedly held that it is not necessary for the Agency to find patient harm to revoke a registration and has declined to consider a lack of harm as evidence of positive prescribing experience. See,

e.g., *Larry C. Daniels, M.D.*, 86 FR 61630, 61660–61 (2021) (“Waiting for a controlled substance to be found coursing through a person’s bloodstream before holding the registrant accountable is wholly at odds with the DEA’s responsibility to protect the public interest under 21 U.S.C. 823(f).”); *Jeanne E. Germeil, M.D.*, 85 FR 73786, 73799 n.32 (2020) (“I decline to consider that ‘no reported overdoses or deaths’ is an indicator of positive dispensing experience and there is no legal authority for the proposition that I must find death or an overdose before I may suspend or revoke a registration.”).

²⁴ See ALJX 29, at 34–36 (citing *Judy L. Henderson, D.V.M.*, 65 FR 5672 (2000); *Theodore Neujahr, D.V.M.*, 65 FR 5680 (2000); *Jimmy H. Conway, Jr., M.D.*, 64 FR 32271 (DEA 1999); *Robert G. Hallermeier, M.D.*, 62 FR 26,818 (1997); *Karen A. Kruger, M.D.*, 69 FR 7016 (2004) *Jeffrey Martin Ford, D.D.S.*, 68 FR 10750 (2003)).

²⁵ See, e.g., *Abbas E. Sina, M.D.*, 80 FR 53191 (2015) (physician with a long history of abusing alcohol, controlled substances, and illicit drugs allowed to retain a restricted registration, despite repeated acts of issuing unlawful prescriptions, because he unequivocally accepted responsibility for his misconduct and demonstrated that he had successfully complied with substance abuse monitoring for four years); *Trenton F. Horst, D.O.*, 80 FR 41079 (2015) (physician with a history of self-abuse granted a restricted registration, despite repeatedly issuing unlawful prescriptions and possessing methamphetamine without a prescription, after expressing true remorse for his actions and demonstrating compliance with a substance abuse treatment plan for seven months).

with the responsibility of registration. Accordingly, the Agency will order that Respondent's registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FV3660037 issued to Mary A. Vreeke, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Mary A. Vreeke, M.D. to renew or modify this registration, as well as any other pending application of Mary A. Vreeke, M.D., for additional registration in California. This Order is effective October 16, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 10, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-20939 Filed 9-13-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23-48]

Awesome Care Pharmacy, Inc.; Decision and Order

On June 1, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Awesome Care Pharmacy, Inc., (Respondent) of Houston, Texas. OSC/ISO, at 1. The OSC/ISO informed Respondent of the immediate suspension of its DEA Certificate of Registration Number FA2332346 (registration), pursuant to 21 U.S.C. 824(d), alleging that Respondent's continued registration constitutes "an imminent danger to the public health or safety." *Id.* at 1 (quoting

21 U.S.C. 824(d)).¹ The OSC/ISO also proposed the revocation of Respondent's registration, alleging that Respondent's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 824(a)(4)).

A hearing was held before DEA Administrative Law Judge Paul E. Soeffing (the ALJ), who, on February 6, 2024, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD), which recommended revocation of Respondent's registration. RD, at 59. Following the issuance of the RD, Respondent filed exceptions.² Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,³ findings of fact, conclusions of law, sanctions analysis, and recommended sanction as found in the RD and summarizes and clarifies portions thereof herein.⁴

¹ Respondent argues in its Exceptions to the Recommended Decision (Exceptions) that the ISO "led to the 'wrongful takings' of its DEA license" because the hearing established that no diversion occurred and there was "no imminent harm, no harm, and no damage, threat or harm to the 'public interest.'" Exceptions, at 1 (citing Tr. 8, 14, 52-53, 55, 69, 179-81, 192). However in this case, the evidence showed that Respondent repeatedly dispensed dangerous combinations of controlled substances that posed serious risks to patients without first resolving blatant red flags of drug abuse and diversion. Respondent's repeated dispensing of controlled substances outside the usual course of the professional practice and in violation of federal and state law established "a substantial likelihood of an immediate threat that death, serious bodily harm, or abuse of a controlled substance . . . [would] occur in the absence of the immediate suspension" of Respondent's registration. 21 U.S.C. 824(d). Thus, the Agency finds that at the time the Government issued the OSC/ISO, there was clear evidence of imminent danger. Moreover, the immediate suspension aspect of the Government's case was final as of the date the OSC/ISO was issued by the Administrator, and is not the subject of these proceedings. 21 U.S.C. 824(d)(1) ("[A]n immediate suspension . . . shall continue in effect until the conclusion of [administrative enforcement] proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction."); 21 CFR 1301.36(h) ("Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction.").

² The Agency has reviewed and considered the Respondent's exceptions and addresses them herein, but ultimately agrees with the ALJ's recommendation.

³ The Agency adopts the ALJ's summary of each witness' testimony, as well as the ALJ's assessment of each witness' credibility, except as clarified herein. See RD, at 4-53.

⁴ Respondent argues in its Exceptions that the ALJ was biased towards the Government. Respondent's only record support for this assertion is a citation to the transcript where the ALJ thanks the Government for printing certain documents in large enough font for him to read. Exceptions, at 3 (citing Tr. 46-47). Respondent cites no authority

I. Findings of Fact

Texas Standard of Care

Katherine Salinas testified as the Government's expert regarding the standard of care for pharmacy practice in the State of Texas. RD, at 6; Tr. 96-97. Ms. Salinas has been licensed as a pharmacist in Texas for over thirty years and has dispensed medications in retail pharmacies since 1992. RD, at 6; Tr. 89-91, 167. Ms. Salinas served as a Compliance Officer with the Texas Board for approximately nine years, where she inspected approximately 2,700 pharmacies, and she currently works as the Medication Safety and Drug Diversion Supervisor for the University of Texas Medical Branch. RD, at 6-7; Tr. 93-95.⁵

Dr. Okpala, Respondent's owner and Pharmacist-in-Charge (PIC), testified on Respondent's behalf. Dr. Okpala testified that he has been licensed as a pharmacist in Texas since 1993. RD, at 20; Tr. 373, 376-77; RX 2, at 2.⁶ The Agency agrees with the ALJ that Dr. Okpala has a significant personal interest in the outcome of these proceedings. RD, at 24. Additionally, the Agency finds that Dr. Okpala's testimony at times contradicted the language of Texas's regulations. Therefore, to the extent that Dr. Okpala's testimony diverges from the Texas regulations and the testimony of Ms. Salinas, the Agency will credit Ms. Salinas's testimony.⁷

Ms. Salinas testified that the standard of care in Texas is informed by DEA regulations and Texas laws and regulations, including Texas Administrative Code § 291.29(b), which requires pharmacists to "make every reasonable effort to ensure that any prescription drug order . . . has been issued for a legitimate medical purpose by a practitioner in the course of medical practice." 22 Tex. Admin. Code § 291.29(b); RD, at 7-8; Tr. 98-100. Ms.

suggesting that the ALJ's expression of appreciation for a chosen font size reflects bias especially where, as here, the ALJ thanked both parties at the end of the hearing for their zealous advocacy. Tr. 522.

⁵ For Ms. Salinas's full qualifications, see RD, at 6-7, Government Exhibit (GX) 10.

⁶ The Agency incorporates herein the entire summary of Dr. Okpala's testimony. RD, at 19-24.

⁷ The ALJ found Dr. Okpala's testimony to be "generally credible," while noting that Dr. Okpala failed to lay an adequate foundation for his testimony that the patients in this case suffered from chronic pain. RD, at 24. The ALJ determined that "[t]o the extent that [Dr. Okpala's] testimony differs from the testimony of other testifying witnesses, I will consider his personal interest in this case, and I will give his testimony the weight it deserves in light of other evidence and testimony presenting during the hearing." *Id.* The Agency agrees with the amount of weight that the ALJ afforded Dr. Okpala's testimony, except as clarified herein.

Salinas testified that this obligation is known as the pharmacist's "corresponding responsibility," and it is the "foundation . . . of good pharmacy practice." RD, at 7; Tr. 98, 327.

Ms. Salinas testified that the Texas Administrative Code "lists out several patterns that the pharmacist needs to be aware of to assess [a] prescription and determine if [it] was indeed issued for a legitimate medical purpose." RD, at 7; Tr. 98. Consistent with Ms. Salinas's testimony, Texas Administrative Code § 291.29(f) states that "[a] pharmacist shall make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist's corresponding responsibility," and provides a list of nineteen "patterns (*i.e.*, red flag factors) [that] are relevant to preventing the non-therapeutic dispensing of controlled substances." 22 Tex. Admin. Code § 291.29(f). The statute further states that these red flags "shall be considered by evaluating the totality of the circumstances rather than any single factor." *Id.* Ms. Salinas testified that the statute's list of red flags is not exhaustive. RD, at 8; Tr. 98, 104–06. A red flag is "anything that should make the pharmacist question [a] prescription and whether or not [it] is safe and appropriate." Tr. 106. Ms. Salinas identified some examples of red flags, including that multiple patients are receiving essentially the same pattern of prescriptions from a small number of prescribers, or that prescriptions are for commonly abused drugs, such as opioids, benzodiazepines, and cough syrups. Tr. 105.

Ms. Salinas testified that a pharmacist should evaluate a prescription for red flags by looking at all of the details on the face of the prescription (*e.g.*, name, address, date of birth, quantity of drug prescribed), checking the Prescription Monitoring Program (PMP), running a public search for the provider to see if there are any disciplinary orders, talking to the patient, and calling the prescribing doctor to discuss any potential red flags. RD, at 8; Tr. 106–08. If the pharmacist identifies any red flags that indicate that the prescription might not be legitimate, then the pharmacist must attempt to resolve those red flags by "taking into account [the] bigger picture," including conversations with the patient and prescriber, relevant statutes and laws, discussions with colleagues, and PMP data. RD, at 8, 10; Tr. 106–08, 209–10, 304–05, 307–08, 313, 317–18, 327. Ms. Salinas testified that if the pharmacist determines that the red flag cannot be resolved, then the pharmacist should not fill the

prescription. RD, at 8; Tr. 107. If, on the other hand, the pharmacist determines that the red flag can be resolved, Ms. Salinas testified that the pharmacist must document the resolution of the red flag, the rationale behind the decision to dispense the medication, and the pharmacist's discussions with the prescriber. RD, at 8–10; Tr. 107–12, 142, 327.

Consistent with Ms. Salinas's testimony, the Texas Administrative Code states that "[p]rior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph." 22 Tex. Admin. Code § 291.33(c)(2)(A)(iv). Subparagraph C specifies that the following information about the pharmacist's consultation with the prescriber shall be documented "on the prescription or in the pharmacy's data processing system associated with the prescription": "(i) date the prescriber was consulted; (ii) name of the person communicating the prescriber's instructions; (iii) any applicable information pertaining to the consultation; and (iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation." *Id.* at § 291.33(c)(2)(C); RD, at 9; Tr. 112. Ms. Salinas testified that the purpose of documentation is to show that the pharmacist saw the red flags and resolved them. RD, at 9; Tr. 112.

Finally, the Texas Administrative Code requires pharmacists to "exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense, which requires 'verify[ing] the order with the practitioner prior to dispensing' '[i]f the pharmacist questions the accuracy or authenticity of a prescription drug order.'" 22 Tex. Admin. Code § 291.34(b)(1)(A).

Respondent's Improper Dispensing

Ms. Salinas testified that she reviewed Respondent's PMP history, dispensing history, and a subset of patient profiles, Tr. 115, and she testified about the red flags that she observed with the prescriptions for these patients, including drug cocktails, pattern prescribing, prescriptions lacking diagnosis codes, patients receiving controlled substances from multiple prescribers, and gaps in prescriptions exceeding one month. RD, at 11–19.

Drug Cocktails

One of the potential red flags identified by the Texas Administrative Code is when "prescriptions by a prescriber . . . are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, . . . or any combination of these drugs." 22 Tex. Admin. Code § 291.29(f)(3). Ms. Salinas testified that a combination of drugs is referred to as a "drug cocktail." RD, at 11; Tr. 122, 328–29. For example, when combined, hydrocodone (an opioid) and carisoprodol (a muscle relaxant)—which are both highly abusable on their own—can create a potentially dangerous drug cocktail that increases the risk of respiratory depression, overdose, or death. RD, at 11; Tr. 118–22, 136, 143, 147, 153, 290, 328–29.⁸ Ms. Salinas testified that the risks to patients from taking these drugs together continue for as long as they are taking them, not just the first time they are prescribed. RD, at 11; Tr. 329. In this case, Ms. Salinas testified that A.T., T.B., K.B., and S.D. were all receiving a dangerous cocktail of hydrocodone and carisoprodol. RD, at 11; Tr. 118–22, 136, 143, 147, 153, 328–29.

As for Respondent, Dr. Okpala testified that the combination of hydrocodone-acetaminophen and carisoprodol did not present a red flag because these medications are combined to produce a "synergistic effect" that is more effective for treating chronic pain. RD, at 34–35; Tr. 419–20, 457. However, Dr. Okpala did not produce adequate evidence that these patients actually suffered from chronic pain or that these drugs were prescribed together to produce a synergistic effect. Nor did Dr. Okpala acknowledge that these drugs can be very dangerous when combined. Thus, the ALJ found, and the Agency agrees, that the frequent prescribing of the drug cocktail of hydrocodone and carisoprodol was a red flag that Respondent should have identified, resolved, and documented prior to dispensing. RD, at 36.

Pattern Prescribing

The Texas Administrative Code identifies several red flags that Ms. Salinas referred to as "pattern prescribing," including that: (1) the pharmacy "dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially

⁸ DI Fernandez similarly testified that hydrocodone-acetaminophen and carisoprodol are "very popular in Houston and are highly diverted," and they are considered "a dangerous combination." RD, at 34; Tr. 24–25.

paired with other drugs, for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner,” 22 Tex. Admin. Code § 291.29(f)(1); (2) “the pharmacy operates with a reasonably discernible pattern of overall low prescription dispensing volume, maintaining relatively consistent [one-to-one] ratio of controlled substances to dangerous drugs and/or over-the-counter products dispensed as prescriptions,” *id.* at § 291.29(f)(2); and/or (3) “prescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities (e.g., monthly supply), indicating a lack of individual drug therapy in prescriptions issued by the practitioner,” *id.* at § 291.29(f)(5). RD, at 11–12; Tr. 129, 339.

In this case, Ms. Salinas testified that Respondent’s dispensing to A.T., T.B., K.B., and S.D. reflected a repeated pattern of large quantities of carisoprodol and hydrocodone in the highest strength available. RD, at 12, 37; Tr. 118–19, 132–33, 136, 143, 147, 339. The highest strength of carisoprodol is 350 mg, and Respondent frequently dispensed 60 to 80 tablets per month to patients. RD, at 12; Tr. 121. The highest strength of hydrocodone-acetaminophen is 10/325 mg, and Respondent frequently dispensed quantities exceeding 100 tablets per month to patients, which Ms. Salinas testified is a red flag. RD, at 12, 37; Tr. 120–21, 143. Ms. Salinas testified that hydrocodone-acetaminophen is highly addictive and is “one of the pattern drugs that [she sees] most often . . . with patterns of . . . abuse.” RD, at 12–13; Tr. 120–21, 149. Ms. Salinas testified that hydrocodone is best when limited to short-term use, so it is a red flag to see hydrocodone prescribed month after month. RD, at 12–13, 37; Tr. 122, 143, 148–51, 339–40. Ms. Salinas testified that hydrocodone may be prescribed for over three months to patients suffering from chronic pain,⁹ but the pharmacist must still exercise the “corresponding responsibility to determine if that [is] appropriate.” Tr. 150. Ms. Salinas also testified that Respondent often dispensed hydrocodone and carisoprodol along with non-controlled drugs, such as ibuprofen, naproxen, or multivitamins, reflecting the one-to-one ratio identified in the Texas Administrative Code. RD, at 11; Tr. 121–22, 129, 153.

As for Respondent, Dr. Okpala testified that the repeated prescriptions for maximum-strength controlled

substances in large quantities over multiple months did not present a red flag because these patients all had chronic pain. RD, at 39; Tr. 406–08, 490, 497, 510. However, the ALJ found, and the Agency agrees, that Dr. Okpala did not present sufficient evidence to establish that these patients had chronic pain. RD, at 39. Dr. Okpala testified that he concluded that they had chronic pain based on the frequency they saw their prescribing doctors,¹⁰ the conversations and interactions he had with the patients and prescribers, and the types of medications prescribed. RD, at 39; Tr. 406–08, 490, 497, 510. Dr. Okpala testified that it was “common sense” for a pharmacist to conclude that a patient suffers from chronic pain when the patient is receiving monthly prescriptions for hydrocodone-acetaminophen. RD, at 39; Tr. 342, 497. He further testified that knowing the cause of the patients’ pain would not impact his decision to dispense the prescriptions presented in this case. RD, at 52; Tr. 501

However, Ms. Salinas testified that the nature of the drug prescribed does not communicate a diagnosis to the pharmacist, and the pharmacist should not assume why the drug was prescribed. RD, at 16; Tr. 306, 329–30. Moreover, Ms. Salinas testified that there was no documentation on the prescriptions suggesting that the repeated hydrocodone prescriptions were for chronic pain. RD, at 15, 41–42; Tr. 150–51, 251–55. Finally, even assuming that Respondent did discuss the diagnoses with the patients or prescribers, the lack of any documentation of those conversations renders Respondent’s dispensing outside of the standard of care. RD, at 14, 38; Tr. 150–51; 22 Tex. Admin. Code § 291.33(c)(2)(A)(iv).

Thus, the ALJ found, and the Agency agrees, that repeated prescriptions for high quantities and high strengths of commonly-abused drugs, sometimes in combination with non-controlled substances in a one-to-one ratio, was a red flag that Respondent should have identified, resolved, and documented prior to dispensing. RD, at 39–40.

¹⁰ The ALJ found, and the Agency agrees, that Dr. Okpala’s testimony that he knew the patients had chronic pain based on the frequency of their visits was concerning. RD, at 39. As the ALJ noted, the fact “[t]hat these patients frequently visited prescribers and received repeated prescriptions for high quantities and similar dosage units of controlled substances on a monthly basis is the very red flag indicative of a lack of personalized care identified by Ms. Salinas and the Texas Administrative Code.” *Id.*

Prescriptions Lacking Specific Diagnoses

Another potential red flag identified by the Texas Administrative Code is when prescriptions for controlled substances “contain nonspecific or no diagnoses, or lack the intended use of the drug.” 22 Tex. Admin. Code § 291.29(f)(4); RD, at 14; Tr. 128. Ms. Salinas testified that the diagnosis code is especially important when hydrocodone or carisoprodol is prescribed, because those medications are a red flag. RD, at 14; Tr. 127. Ms. Salinas testified that in this case, there was generally no documentation on the face of a prescription related to a patient’s diagnosis, so she could not determine whether a patient was being prescribed hydrocodone for chronic or acute pain, which may impact the length of time a patient is prescribed hydrocodone. RD, at 15; Tr. 150–51. Ms. Salinas testified that diagnoses of “pain” or “chronic pain syndrome” are not specific enough under the Texas Administrative Code, and should trigger a red flag analysis. RD, at 15; Tr. 331–32. Ms. Salinas testified that she was unable to determine the purpose of the prescriptions or the type of pain that the medications were intended to treat. RD, at 15–16; Tr. 252–53, 329.

As for Respondent, Dr. Okpala presented conflicting testimony regarding whether “pain” was a diagnosis, but ultimately testified that pain may be used as a diagnosis. RD, at 42; Tr. 484–85. Dr. Okpala also testified that neither DEA nor Texas regulations requires the inclusion of diagnosis codes on the face of a prescription. RD, at 42; Tr. 448, 507. Finally, Dr. Okpala testified that he knew that the patients in this case had chronic pain, although the Agency found above that this conclusion was not adequately supported.

The ALJ found, and the Agency agrees, that Ms. Salinas’s testimony was more credible on this issue because it was supported by the relevant provisions of the Texas Administrative Code, which identify nonspecific diagnosis codes as a relevant red flag factor. RD, at 42; 22 Tex. Admin. Code § 291.29(f)(4). Thus, the ALJ found, and the Agency agrees, that the lack of specific diagnoses to justify the controlled substance prescriptions was a red flag that Respondent should have identified, resolved, and documented prior to dispensing. RD, at 42–43.

Gaps in Prescriptions

Ms. Salinas testified that another potential red flag is when gaps between usually-consistent monthly

⁹ Ms. Salinas testified that chronic pain is pain that “lasts greater than three months.” RD, at 14 n.51; Tr. 150.

prescriptions exceed a month, because this indicates that the patient is not taking the controlled substance as prescribed. RD, at 18, 48–49; Tr. 140. Ms. Salinas testified that if a pharmacist observes a gap, the pharmacist should have a discussion with the patient to ensure that the patient is taking the medication correctly and document that discussion. RD, at 18–19; Tr. 140, 142. The pharmacist should also contact the prescribing physician to determine the purpose of the gap, and document that conversation if the red flag is resolved. RD, at 19; Tr. 341–42. The ALJ found, and the Agency agrees, that gaps between prescriptions exceeding one month was a red flag that Respondent should have identified, resolved, and documented prior to dispensing. RD, at 49–50.¹¹

Respondent's Dispensing to A.T., T.B., K.B., and S.D.

Ms. Salinas testified in more detail about the prescriptions that she reviewed for A.T., T.B., K.B., and S.D. Ms. Salinas testified that she identified the following red flags with the prescriptions that Respondent dispensed to A.T.: (1) A.T. was receiving pattern prescriptions for a dangerous cocktail of hydrocodone and carisoprodol, RD, at 12; Tr. 118–19, 120–21; (2) A.T. was receiving the same controlled substances from at least six prescribers,¹² RD, at 17; Tr. 118–19,

136–38; (3) A.T. was also receiving non-controlled substances, such as ibuprofen and biofreeze, which implicates the one-to-one controlled to non-controlled substances pattern identified in the Texas Administrative Code, RD, at 17; Tr. 132, 137–38; (4) A.T. repeatedly received a high quantity of carisoprodol along with a high quantity of hydrocodone, which is a strong opioid that is best when limited to short-term use, RD, at 12; Tr. 119, 122–23; (5) many of A.T.'s prescriptions lacked a diagnosis code or any language indicating the purpose of the prescription, and others contained a non-specific diagnosis code of “chronic pain syndrome,” RD, at 15; Tr. 136–37, 331–32; GX 2, at 10–11, 84; and (6) there was a gap in A.T.'s prescriptions of over a month that indicated that she was not taking the medications as prescribed, RD, at 18–19; Tr. 139–41. Ms. Salinas testified that there was no documentation indicating that Respondent identified or resolved any of these red flags, and that Respondent therefore failed to exercise its corresponding responsibility and abide by the standard of care in its dispensing to A.T. RD, at 9; Tr. 139.¹³

must be identified, resolved, and documented prior to dispensing. 22 Tex. Admin. Code § 291.29(f)(10); RD, at 16; Tr. 123–34; 340. The ALJ found that the Government had not proven that multiple prescribers was a red flag in this case because Dr. Okpala testified that several of the prescribers worked together in a group practice, that he visited the group practice frequently to ensure that the patients were being treated appropriately, and that he maintained professional relationships with all of the prescribers. RD, at 23, 43–47; Tr. 386–89, 391, 394, 398–99, 406, 467, 490, 502. However, Dr. Okpala's testimony on this issue is more relevant to whether the red flag of multiple prescribers can be resolved in this case, not whether multiple prescribers is a red flag that warrants follow up. Dr. Okpala's testimony actually supports the conclusion that multiple prescribers was a red flag. He testified that he visited the group practice on at least twenty occasions to “make sure [the prescribers] [did] what [they were] supposed to do for patients,” RD, at 23, 44; Tr. 387–89, 391, 394, which suggests that he felt the need to surveil the clinic, and he even testified that the doctors told him, “okay, if you're doubting me, stay there and watch.” Tr. 393. Thus, the Agency credits Ms. Salinas's credible expert testimony, as supported by Texas law, that multiple prescribers was a red flag that should have been identified, resolved, and documented. Dr. Okpala did not document any of his discussions with the prescribers or any other steps that he took to resolve this red flag, which is required by Texas law and the standard of care. 22 Tex. Admin. Code § 291.33(c)(2)(A)(iv); RD, at 8–10; Tr. 107–12, 142, 327. Even without this finding, the combination of other red flags is “so suspicious as to support a finding that the pharmacists who filled them violated their corresponding responsibility due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy.” *Lewisville Medical Pharmacy*, 87 FR at 59,459 (citing *The Pharmacy Place*, 86 FR 21,008, 21,013 (collecting Agency decisions)).

¹³ For more details about the prescriptions that Respondent filled for A.T. without identifying and

Ms. Salinas testified that she identified the following red flags with the prescriptions that Respondent dispensed to T.B.: (1) T.B. was receiving pattern prescriptions for a dangerous cocktail of hydrocodone and carisoprodol, RD, at 11, Tr. 132–22; GX 5; (2) T.B. was also receiving non-controlled substances, such as ibuprofen and lisinopril, which implicates the one-to-one controlled to non-controlled substances pattern identified in the Texas Administrative Code, RD, at 12–13; Tr. 129–30, 131–32; GX 5; (3) T.B. was receiving these medications from multiple prescribers, RD, at 13, 17; Tr. 130–33; (4) T.B. repeatedly received a high quantity of carisoprodol along with a high quantity of hydrocodone (always over 100 tablets), which is a strong opioid that is best when limited to short-term use, RD, at 12–13; Tr. 122–23, 129–33; and (5) none of T.B.'s prescriptions for a fifteen-month period contained diagnosis codes. RD, at 15; Tr. 125–126, 333–34. Ms. Salinas testified that there was no documentation indicating that Respondent identified or resolved any of these red flags, and that Respondent therefore failed to exercise its corresponding responsibility and abide by the standard of care in its dispensing to A.T. RD, at 9; Tr. 134–35.¹⁴

Ms. Salinas testified that she identified the following red flags with the prescriptions that Respondent dispensed to K.B.: (1) K.B. was receiving pattern prescriptions for a dangerous cocktail of hydrocodone and carisoprodol in the same quantity each month, RD, at 11, 13; Tr. 143; GX 7; (2) K.B. was also receiving non-controlled substances, such as ibuprofen and biofreeze, which implicates the one-to-one controlled to non-controlled substances pattern identified in the Texas Administrative Code, RD, at 17; Tr. 129–32, 144–45; GX 6, at 1–2; (3) K.B. was receiving these medications from multiple prescribers, RD, at 17; Tr. 143–45; GX 6 at 1–2; (4) K.B. repeatedly received a high quantity of hydrocodone (over 100 tablets), which is a strong opioid that is best when limited to short-term use, RD, at 13; Tr. 122–23, 143; and (5) the vast majority of K.B.'s prescriptions lacked a diagnosis code. RD, at 15; Tr. 143–44; GX 6, at 24–25. Ms. Salinas testified that there was no documentation indicating that Respondent identified or resolved any of these red flags, and that Respondent

resolving these red flags, *see* RD, at 30–50; GX 2–3.

¹⁴ For more details about the prescriptions that Respondent filled for T.B. without identifying and resolving these red flags, *see* RD, at 30–50; GX 4–5.

¹¹ Respondent, through counsel, argued in its closing argument that the Government is improperly tasking Respondent with communicating with prescribers during time periods where prescriptions are not presented to the pharmacy. RD, at 49; Tr. 520. Respondent argued that “[t]he societal interest, including that of pharmacies, is to minimize the use and abuse of opioids,” and thus Respondent should not be responsible for communicating with physicians when a patient is not prescribed controlled substances after previous, repeated monthly prescriptions. RD, at 49; Tr. 521. The ALJ found, and the Agency agrees, that this argument misconstrues Ms. Salinas's testimony. RD, at 49. According to Ms. Salinas, lengthy gaps in habitual prescriptions provides evidence of potential abuse and diversion. RD, at 49; Tr. 140. Ms. Salinas is not testifying that Respondent must attempt to dispense more medication to a patient when that patient is not issued the typical monthly prescription. RD, at 49. Rather, Respondent must contact the prescribing physician and document that communication when a patient returns to the pharmacy to receive the previously regular medication after a significant gap in treatment. *Id.*; Tr. 140–42, 154, 341–42. Aside from the argument presented in its closing statement, the Respondent presented no evidence to rebut Ms. Salinas's expert testimony that gaps between prescriptions presented a red flag that required documented resolution prior to dispensing. RD, at 49. Therefore, the Agency agrees with the ALJ and credits Ms. Salinas's un rebutted expert testimony about this red flag. *Id.* at 49–50.

¹² The Texas Administrative Code identifies patients “obtaining similar drugs from multiple practitioners” as a potential red flag factor, and Ms. Salinas testified that this is a common red flag that

therefore failed to exercise its corresponding responsibility and abide by the standard of care in its dispensing to K.B. RD, at 9; Tr. 146, 155; GX 6, 7.¹⁵

Ms. Salinas testified that she identified the following red flags with the prescriptions that Respondent dispensed to S.D: (1) S.D. was receiving pattern prescriptions for a dangerous cocktail of hydrocodone and carisoprodol in the same quantity each month, RD, at 11, 13; Tr. 147; GX 9; (2) S.D. was also receiving non-controlled substances, such as gabapentin and naproxen, which implicates the one-to-one controlled to non-controlled substances pattern identified in the Texas Administrative Code, RD, at 13; Tr. 153; (3) S.D. was receiving these medications from multiple prescribers, RD, at 17; Tr. 132, 147, 151–52; GX 8 at 1–2; (4) S.D. repeatedly received a high quantity of hydrocodone, which is a strong opioid that is best limited to short-term use, RD, at 13; Tr. 122–23, 147; (5) none of S.D.’s prescriptions contain diagnosis codes, RD, at 15; Tr. 151; GX 8, at 9–10; and (6) there were gaps in S.D.’s prescriptions that indicated that S.D. was not taking the medications as prescribed. RD, at 19; Tr. 154. Ms. Salinas testified that there was no documentation indicating that Respondent identified or resolved any of these red flags, and that Respondent therefore failed to exercise its corresponding responsibility and abide by the standard of care in its dispensing to S.D. RD, at 9; Tr. 153–54; GX 8, 9.¹⁶

As for Respondent, Dr. Okpala testified that he did not observe any red flags with any of the prescriptions in this case, so there was “[n]othing to resolve” and nothing to document. Tr. 402. Respondent’s counsel asked Dr. Okpala what he did if he encountered “[p]rescriptions” that looked like red flags,” and Dr. Okpala testified that he would follow up, call physicians, and speak to patients. RD, at 21; Tr. 402, 467, 479–80. Dr. Okpala testified that he “did that on all these prescriptions.” Tr. 467. When Government counsel asked Dr. Okpala why there were no notes on the prescriptions or in the patient file, Dr. Okpala replied, “I mean, I know the patients; I know the doctors. I did my job professionally as a pharmacist, and I used my professional judgment, and that’s what I did.” Tr. 480.

Dr. Okpala’s testimony that the prescriptions in this case did not present any red flags is simply not credible. The patterns presented by these prescriptions are specifically identified in the Texas Administrative Code as potential red flag factors, and Ms. Salinas offered credible expert testimony with respect to each red flag. Dr. Okpala testified that he took steps to verify the legitimacy of these prescriptions, despite his belief that there were no red flags. However, even assuming *arguendo* that Dr. Okpala did take these steps for the relevant prescriptions, he did not document his actions as required by the Texas standard of care. Moreover, it is unclear what Dr. Okpala would have discussed with the patients and physicians if he did not believe that any red flags existed. RD, at 51. Therefore, the Agency does not credit Dr. Okpala’s testimony that these prescriptions did not present red flags, or that Dr. Okpala satisfied his obligation to ensure that there were no red flags. RD, at 51.

Thus, the ALJ found, and the Agency agrees, that the standard of care in Texas requires that any red flags present for a prescription must be resolved before dispensing and that the resolution must be documented. RD, at 27–53. The ALJ also found, and the Agency agrees, that Respondent failed to do this, rendering Respondent’s dispensing to A.T., T.B., K.B., and S.D. outside the usual course of professional practice and in violation of the Texas standard of care. *Id.* The Agency further finds that Respondent failed to exercise sound professional judgment in filling the prescriptions in this case. RD, at 9; Tr. 328.

II. Discussion

A. The Five Public Interest Factors

Under the CSA, “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant’s] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant’s] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37,507, 37,508 (1993).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1), the Government’s evidence in support of its *prima facie* case for revocation of Respondent’s registration is confined to Factors B and D. RD, at 27–33; *see also id.* at 27 n.78 (finding that Factors A, C, and E do not weigh for or against revocation¹⁷).

Having reviewed the record and the RD, the Agency agrees with the ALJ, adopts the ALJ’s analysis, and finds that the Government’s evidence satisfies its *prima facie* burden of showing that Respondent’s continued registration would be “inconsistent with the public interest.” 21 U.S.C. 824(a)(4); RD, at 27–54.

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.*, 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21,156, 21,162 (2022). In the current matter, the Government has alleged that Respondent violated numerous federal and state laws regulating controlled substances. OSC/ISO, at 2–9. Specifically, federal law requires that “[a] prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice,” and that “[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a), 1306.06; *see also* 21 U.S.C. 829. Federal law also

¹⁵ For more details about the prescriptions that Respondent filled for K.B. without identifying and resolving these red flags, *see* RD, at 30–50; GX 6–7.

¹⁶ For more details about the prescriptions that Respondent filled for S.D. without identifying and resolving these red flags, *see* RD, at 30–50; GX 8–9.

¹⁷ Regarding Respondent’s argument that the lack of disciplinary action against Respondent or Dr. Okpala was not given appropriate weight in the public interest analysis (Exceptions, at 2–3), this point was addressed by the ALJ in considering Public Interest Factors A, C, and E and the Agency agrees with the ALJ’s analysis.

emphasizes that although “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner . . . a corresponding responsibility rests with the pharmacist who fills the prescription.” 21 CFR 1306.04(a). DEA has consistently interpreted this provision as prohibiting a pharmacist from filling a prescription for a controlled substance when he either “knows or has reason to know that the prescription was not written for a legitimate medical purpose.” *Medicine Shoppe-Jonesborough*, 73 FR 364, 381 (2008) (citing *Medic-Aid Pharmacy*, 55 FR 30,043, 30,044 (1990)). DEA has further held that “[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.” *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy*, 55 FR 4729, 4730 (1990).

As for state law, Texas Administrative Code § 291.29(b) requires pharmacists to “make every reasonable effort to ensure that any prescription drug order . . . has been issued for a legitimate medical purpose by a practitioner in the course of medical practice.” 22 Tex. Admin. Code § 291.29(b). The statute further requires pharmacists to “make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist’s corresponding responsibility,” by considering a list of nineteen “patterns (*i.e.*, red flag factors) [that] are relevant to preventing the non-therapeutic dispensing of controlled substances.” *Id.* § 291.29(f). These red flag factors “shall be considered by evaluating the totality of the circumstances rather than any single factor.” *Id.*

In addition, Texas law requires pharmacists to “exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense,” which requires “verify[ing] the order with the practitioner prior to dispensing” “[i]f the pharmacist questions the accuracy or authenticity of a prescription drug order.” *Id.* 291.34(b)(1)(A). Finally, Texas law requires that “[p]rior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained” *Id.* § 291.33(c)(2)(A)(iv).

In the current matter, the Agency agrees with the ALJ’s analysis that Respondent’s dispensing fell below the Texas standard of care, and thus was

outside the usual course of professional practice, because, as detailed above, Respondent dispensed numerous controlled substance prescriptions to four patients without properly addressing and resolving clear red flags of abuse and diversion including dangerous drug cocktails, pattern prescriptions for high doses and quantities of commonly abused controlled substances, and patients receiving controlled substances from multiple prescribers. *See* RD, at 27–53.

As Respondent’s conduct displays clear violations of the federal and state regulations described above, the Agency agrees with the ALJ and hereby finds that Respondent repeatedly violated federal and state law relating to controlled substances. RD, at 27–53. Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Respondent’s registration and thus finds Respondent’s continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). *Id.*

Respondent’s Exceptions

Respondent argues in its Exceptions that the determination of whether a red flag exists is subjective and it is made by the pharmacist based on the totality of circumstances at the time of dispensing. Exceptions, at 3, 8–11. Respondent argues that the ALJ erred by giving more weight to Ms. Salinas’s testimony about the existence of red flags than to Dr. Okpala’s, because “an expert witness’s testimony cannot replace the subjective thoughts of a pharmacist when they are filling a prescription.” *Id.* Respondent further argues that the duty to resolve and document the resolution of a red flag only arises if the pharmacist subjectively determines that a red flag exists. *Id.*

The Agency has repeatedly rejected these arguments. In a recent case in Texas, the respondent’s owner and PIC testified, like Dr. Okpala, that red flags explicitly listed in Texas law were not actually red flags, and that there is no duty to document if the pharmacist does not identify any red flags. *Lewisville Medical Pharmacy*, 87 FR 59,456, 59,459 (2022). The Agency found that this testimony was “evidence that Respondent was willfully blind to red flags on the prescriptions it filled,” and that it “evidences, at best, a deep and endemic understanding of Texas and federal law.” *Id.* at 59,459–60. Here, the Agency likewise finds that Dr. Okpala’s testimony reflects a troubling indifference towards Texas law and supports a finding that he was willfully blind to the numerous red flags

presented by the prescriptions in this case.

Respondent also argues in its Exceptions that Dr. Okpala knew that the prescriptions were issued for a legitimate medical purpose because he had spoken to the doctors and he knew that they had valid doctor-patient relationships with the patients at issue. Exceptions, at 7–10. This argument again reflects a deep misunderstanding of a pharmacist’s professional obligations under federal and Texas law. A pharmacist must always exercise his corresponding responsibility to identify, resolve, and document red flags, even where the prescriptions are ultimately determined to be legitimate, and even where there ultimately is a valid doctor-patient relationship. Respondent undeniably failed to fulfill this obligation. Respondent’s Exception also implies that every prescription that is issued in a valid doctor-patient relationship is legitimate, but Respondent offers no support for this assertion. And regardless of whether Respondent believed that the prescribers in this case had valid doctor-patient relationships with their patients, the evidence overwhelmingly suggests that the prescriptions that they issued were not legitimate. Prior Agency decisions have consistently found that prescriptions with a similar list of red flags were “so suspicious as to support a finding that the pharmacists who filled them violated their corresponding responsibility due to actual knowledge of, or willful blindness to, the prescriptions’ illegitimacy,”¹⁸ and Ms. Salinas credibly testified that there were numerous red flags that created doubt as to whether the prescriptions in this case were legitimate. RD, at 9; Tr. 336. Ms. Salinas’s testimony that the prescriptions raised numerous suspicions—such as repeated pattern prescriptions for high-dose opioids and dangerous combinations of controlled substances—stands in stark contrast to Dr. Okpala’s testimony that it was “common sense” to assume that hydrocodone was permissibly being prescribed for chronic pain. RD, at 39; Tr. 342, 497. This testimony reflects a troubling indifference towards the dangers posed by repeated prescriptions for a Schedule II controlled substance, and it further reinforces that Dr. Okpala does not understand his corresponding responsibility.

Finally, Respondent argues in its Exceptions that the Government failed to prove that the prescriptions were

¹⁸ *Lewisville Medical Pharmacy*, 87 FR at 59,459 (citing *The Pharmacy Place*, 86 FR 21,008, 21,013 (collecting Agency decisions)).

invalid, that they were issued for non-therapeutic purposes, or that Respondent dispensed them inaccurately. Exceptions, at 2, 7–8. Again, Respondent's Exception misconstrues the applicable legal standard. The Government need not demonstrate that a prescription was invalid, non-therapeutic, or illegitimate in order to prove that a pharmacist violated his corresponding responsibility. The Government need only prove that the pharmacist failed to identify, resolve, and document red flags presented by a prescription, which, here, Respondent repeatedly failed to do.

III. Sanction

Where, as here, the Government has established sufficient grounds to revoke Respondent's registration, the burden shifts to the registrant to show why it can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, it must both accept responsibility and demonstrate that it has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33,738, 33,746 (2021).

Here, and as noted by the ALJ, Respondent's PIC explicitly denied any responsibility for repeatedly filling prescriptions in violation of state and federal law. RD, at 55. Dr. Okpala repeatedly testified that he did not observe any red flags with any of the prescriptions in this case and that he strictly follows the relevant law and regulations. RD, at 55; Tr. 402, 414–15, 452, 460, 467, 474–75, 503. As such, the ALJ concluded, and the Agency agrees, that Respondent has not demonstrated unequivocal acceptance of responsibility for its actions. RD, at 56–57 (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.*, 81 FR 79,188, 79,201–202 (2016)).¹⁹

¹⁹ When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures.

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.*, 80 FR 74,800, 74,810 (2015). In this case, the Agency agrees with the ALJ that the interests of specific deterrence motivate in favor of revocation given that Respondent's PIC filled many of the prescriptions at issue, yet failed to acknowledge that any red flags existed or required resolution. RD, at 58–59. As the ALJ noted, Respondent continues to reject the notion that pharmacists have a duty to identify and resolve red flags prior to dispensing, which indicates that Respondent has not been rehabilitated. *Id.* at 55–56. Respondent argues in its Post-Hearing Brief (PHB) that “there is no cause of action in Texas for ‘red flags’ or failing to meet ‘corresponding duty,’” despite having been confronted in this proceeding with numerous federal and state laws that explicitly articulate this obligation. *Id.* (citing Respondent's PHB, at 5). Portions of Dr. Okpala's testimony indicate that Dr. Okpala is more focused on avoiding further government scrutiny than complying with federal and state law. RD, at 56. Dr. Okpala testified that he has never had a problem in his thirty years of practicing pharmacy, but that he will maintain better documentation in the future because “having this court order [] told [him] that.” RD, at 56; Tr. 402–03, 468. Further, Dr. Okpala's failure to acknowledge the dangers of concurrent prescriptions for opioids and benzodiazepines is troubling and indicates that Respondent cannot be trusted to safely dispense controlled substances. The Agency also agrees with the ALJ that the interests of general deterrence support revocation, as a lack of sanction in the current matter would send a message to the registrant community that the failure to properly address and document resolution of red flags can be excused. *Id.* at 59.

Moreover, the Agency agrees with the ALJ that Respondent's actions were egregious. *Id.* at 57–58. As the ALJ noted, Respondent dispensed dangerous combinations of controlled substances to four patients over a two-year period without resolving multiple red flags indicative of abuse and diversion. *Id.* at 57–58. Ms. Salinas testified that the nature of the controlled substances issued by the Respondent “put people

Ajay S. Ahuja, M.D., 84 FR 5,479, 5,498 n.33 (2019) (citing *Jones Total Health Care Pharmacy*, 81 FR at 79,202–303); *Daniel A. Glick, D.D.S.*, 80 FR 74,800, 74,801, 74,810 (2015). Even so, in the current matter, Respondent did not identify any relevant remedial measures.

in danger.”²⁰ *Id.* at 58; Tr. 288. In sum, Respondent has not offered any credible evidence on the record that rebuts the Government's case for revocation of its registration and Respondent has not demonstrated that it can be entrusted with the responsibility of registration. RD, at 58–59. Accordingly, the Agency will order that Respondent's registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FA2332346 issued to Awesome Care Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Awesome Care Pharmacy, to renew or modify this registration, as well as any other pending application of Awesome Care Pharmacy, for additional registration in Texas. This Order is effective October 16, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 10, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–20937 Filed 9–13–24; 8:45 am]

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²⁰ Respondent noted in its Exceptions that none of the medications it dispensed caused adverse reactions, which Respondent argues supports a conclusion that “Respondent did not fill any ‘unlawful’ prescription [sic].” Exceptions, at 7. However, it is not necessary for the Agency to find patient harm to revoke a registration. *Melanie Baker, N.P.*, 86 FR 23,998, 24,009 (2021); *Larry C. Daniels, M.D.*, 86 FR 61,630, 61,660–61 (2021); *Jeanne E. Germeil, M.D.*, 85 FR 73,786, 73,799 n.32 (2020). Moreover, Ms. Salinas testified that a pharmacist's corresponding responsibility to address red flags remains in place even if a patient does not physically suffer any adverse effects from a medication or drug cocktail. RD, at 9; Tr. 329.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1430]

Importer of Controlled Substances
Application: Purisys, LLC

AGENCY: Drug Enforcement
Administration, Justice.

ACTION: Notice of application.

SUMMARY: Purisys, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration

on or before October 16, 2024. Such persons may also file a written request for a hearing on the application on or before October 16, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no

need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 14, 2024, Purisys, LLC, 1550 Olympic Drive, Athens, Georgia 30601-1602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methadone	9250	II

The company plans to import an isomer of methadone not currently available domestically to manufacture a non-control substance. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,
Acting Deputy Assistant Administrator.

[FR Doc. 2024-20935 Filed 9-13-24; 8:45 am]

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DEPARTMENT OF JUSTICE

[OMB 1140-0022]

Agency Information Collection
Activities; Extension of a Previously
Approved Collection; Federal
Explosives License/Permit (FEL/P)
Renewal Application—ATF Form
5400.14/5400.15

AGENCY: Bureau of Alcohol, Tobacco,
Firearms, and Explosives, Department of
Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be

submitting the following information collection request for renewal to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: We encourage comments and will accept them for 60 days, until November 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Shawn Stevens, Federal Explosives Licensing Center, either by mail at 244 Needy Rd., Martinsburg, WV 25405, by email at FELC@atf.gov, or by telephone at 304-616-4400.

SUPPLEMENTARY INFORMATION: We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

- Evaluate whether the proposed information collection is necessary for the proper performance of Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) functions, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed information collection,

- including the validity of the methodology and assumptions used;
- Evaluate whether the quality, utility, and clarity of the information to be collected can be enhanced, and if so, how; and
- Suggest ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: Chapter 40 of title 18 of the United States Code (U.S.C.) provides that no person may engage in the business of manufacturing, importing, or dealing in explosives without first obtaining a license to do so. In addition, the statute also requires a person who wants to receive or transport explosives or explosive materials in interstate or foreign commerce to first obtain a permit to do so. Licenses/permits are issued for a specific period and are renewable upon the same conditions as the original license/permit. In order to continue uninterrupted in the activities covered by the license/permit when that specific period ends, licensees/permittees must renew their license/permit by filing a renewal application form.

Overview of This Information Collection

1. Type of Information collection: Extension of a previously approved collection.

2. Title of the form/collection: Federal Explosives License/Permit (FEL/P) Renewal Application.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: ATF Form 5400.14/5400.15. Component: Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as the

obligation to respond: Affected Public: Individuals or households; private sector, for- or not-for-profit institutions. The obligation to respond is mandatory per 18 U.S.C. 843(a).

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 3,000 respondents will use the form once annually, and it will take each respondent approximately 20 minutes to complete their responses.

6. An estimate of the total annual time burden (in hours) associated with the collection: The estimated annual public time burden associated with this

collection is 900 total hours, which is equal to 3,000 (total respondents) * 1 (# of responses per respondent) * 0.3 (20 minutes).

7. An estimate of the total annual public costs associated with the collection: It costs an average of \$1 to mail the application to ATF (current first-class standard envelope postage cost of .68 cents averaged with higher costs for some respondents who will incur additional postage for mailing larger envelopes containing fingerprint cards).

8. Combined estimated time burden and item (postage) costs to the public:

ESTIMATED ANNUALIZED PUBLIC TIME BURDEN AND ITEM COSTS

Activity	Number of respondents	Frequency of response	Total annual responses	Time per response	Hourly rate or item cost	Monetized time or item cost/ respondent	Annualized costs for all respondents
Explosives Renewal Application	3,000	1	3,000	20 min (0.3/hour) ..	\$44.72	\$13.00	\$39,000
Postage costs				n/a	1	1	3,000
Totals						14.00	42,000

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 11, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-20975 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB 1140-0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Demand 2 Program: Report of Firearms Transactions—ATF Form 5300.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Matthew S. Grim, National Tracing Center Division (NTCD)/Tracing Operations Records Management Branch (TORM), either by mail at 244 Needy Rd., Martinsburg, WV 25405, by email at Matthew.grim@atf.gov, or telephone at 304-260-3683.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: The Demand 2 Program requires Type 01 and Type 02 Federal Firearm Licensees (FFLs) with 25 or more traces with a time to crime of three years or less in a calendar year, to submit an annual report followed by quarterly reports of used firearms acquired by the FFL. Due to the growing number of Type 07 (Manufacturer of Firearms) FFLs meeting Demand 2 criteria through dealing firearms—with many showing little to no manufacturing activity—and the potential that some FFLs may use a Type 08 (Importer of Firearms) license to deal in firearms and avoid the reporting requirement if Type 08 is not subjected to Demand 2, ATF is including Type 07 and Type 08 licensees within the Demand 2 Program. Information collection OMB # 1140-0024 is being revised to now include Type 07 and 08 FFLs as a population that is subject to the reporting requirements of the Demand 2 program. The Demand 2 program is an important tool to assist in identifying and investigating the diversion of firearms

from lawful commerce to criminal use. Information from the Demand 2 program helps identify purchasing patterns involved in trafficking schemes and other forms of criminal diversion, and enhances the ability of law enforcement to determine the source of firearms used in violent crimes.

Overview of This Information Collection:

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Demand 2 Program: Report of Firearms Transactions.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 5300.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector-for or not for profit institutions.

The obligation to respond is mandatory under authority 18 U.S.C. 923(g)(5), in the form and manner specified in 27 CFR 478.126(a).

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 1,453 respondents will respond to this collection 4 times annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 2,906 total hours which is equal to 1,453 (total respondents) × 4 (# of response per respondent) × 0.5 (30 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$424.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
ATF Form 5300.5	1,453	4	5,812	30	.....
Unduplicated Totals	1,453	4	5,812	30	.....

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 11, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-20976 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0065]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: National Corrections Reporting Program

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics (BJS), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Derek Mueller, Ph.D., Statistician, Bureau of Justice Statistics, 999 North Capitol St. NE, Washington, DC 20002. (email: Derek.Mueller@usdoj.gov; telephone: 202-353-5216).

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, volume 89 page 55280, on July 3, 2024, allowing a 60-day comment period. No comments were received.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number [1121-0065]. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a Currently Approved Collection.

2. *Title of the Form/Collection:* National Corrections Reporting Program. The collection includes the following parts: Prisoner Admission Report, Prisoner Release Report, Prisoners in Custody at Year-end Report, Post-Custody Community Supervision Entry Report, Post-Custody Community Supervision Exit Report.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP-1A, NCRP-1B, NCRP-1D, NCRP-1E, NCRP-1F. The applicable component within the Department of Justice is the Bureau of Justice Statistics (Prisons Statistics Unit), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: 50 state departments of corrections (DOCs) and 7 parole boards (in six states and the District of Columbia).

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* BJS anticipates 57 respondents to NCRP by 2027: 50 state DOC respondents and seven separate parole boards (in six states and the District of Columbia). Burden hours for the three collection years (2025–2027) differ based on whether a state has previously submitted NCRP prison and PCCS data in recent years. In the last four years, 47 DOCs have submitted NCRP prison data, but currently, only 35 respondents have submitted PCCS data.

7. *Estimated Time per Respondent:* BJS anticipates 57 respondents to NCRP by 2027: 50 state DOC respondents and seven separate parole boards (in six states and the District of Columbia). Burden hours for the three collection years (2025–2027) differ based on whether a state has previously submitted NCRP prison and PCCS data in recent years. In the last four years, 47 DOCs have submitted NCRP prison data, but currently, only 35 respondents have submitted PCCS data.

Burden Hours for Prison Records (NCRP-1A, NCRP-1B, NCRP-1D)

All 50 DOCs have submitted NCRP prison data in the past, so the average time needed to continue providing prison data is expected to be 7 hours per respondent for both prisoner admissions and releases (NCRP-1A and NCRP-1B) and 7 hours for data on persons in prison at year-end (NCRP-1D). For 2025–2027, the total burden estimate is 14 hours per DOC for a total of 700 hours annually for the 50 DOCs (14 hours*50 = 700 hours). This is the same estimate as given for the 2024 collection since BJS is not requesting changes to the collection.

Burden Hours for PCCS Records (NCRP-1E, NCRP-1F)

In 2023, there were 35 jurisdictions submitting 2022 PCCS data (31 DOCs and 4 parole supervising agencies), and BJS estimates that extraction and submission of both the PCCS entries and exits takes an average of 8 hours per jurisdiction. For 2025–2027, BJS hopes to recruit an additional five jurisdictions to submit NCRP PCCS data. For those 35 supervising agencies currently responding, provision of the PCCS data in 2022–2024 will total 280 hours (8 hours*35 = 280 hours) annually. The total estimate for submission of PCCS

for new jurisdictions in 2022–2024 is 120 hours (24 hours*5 = 120 hours). For new agencies, BJS assumes the initial submission will take about three times longer than established reporters to account for programming, questions, and submission. The total amount of time for all PCCS submissions annually is 400 hours.

Burden Hours for Data Review/Follow-Up Consultations

Follow-up consultations with respondents are usually necessary while processing the data to obtain further information regarding the definition, completeness and accuracy of their report. The duration of these follow-up consultations will vary based on the number of record types submitted, so BJS has estimated an average of 3 hours per jurisdiction to cover all of the records (prison and/or PCCS) submitted. In 2025, BJS anticipates that one of the two parole boards not currently submitting PCCS data will begin to submit, so the number of jurisdictions requiring follow-up consultations is 51 (50 DOCs submitting at least the prison data, and one parole board submitting only PCCS data). This yields a total of 153 hours of follow-up consultation after submission (3 hours * 51 = 153 hours). This total estimate of 153 hours for data review/follow-up consultations remains the same for 2026 and 2027.

8. *Frequency:* Annually.

9. *Total Estimated Annual Time Burden:* BJS anticipates that the total burden for provision and data follow-up of all NCRP data across the participating jurisdictions in 2025–2027 to be 1,235 hours (700 hours for prison records, 400 hours for PCCS records, and 153 hours for follow-up consultation).

10. *Total Estimated Annual Other Costs Burden:* \$48,696.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per survey (hrs)	Time for follow-up (hrs)	Total annual burden (hours)
NCRP Prison (NCRP-1A, 1B, 1D)	50	1	50	14	1.5	15.5
NCRP PCCS (NCRP 1E, 1F)	35	1	35	8	1.5	9.5
NCRP PCCS New	5	1	5	24	1.5	25.5
Unduplicated Totals .....	.....	.....	.....	.....	.....	1,235

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE 4W-218, Washington, DC 20530.

Dated: September 11, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-20959 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0006]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Title: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (EOIR-28)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Laetitia Mukala-Nirere, Attorney Advisor, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305-0470, EOIR.PRA.Comments@usdoj.gov or Kabina.L.Mukala-Nirere@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: An attorney or Accredited Representative (with full accreditation) must register with the EOIR eRegistry in order to practice before the Immigration Court (see 8 CFR 1292.1(f)). Registration must be completed online on the EOIR website at www.justice.gov/eoir. An appearance shall be filed on a Form EOIR-28 by the attorney or representative appearing in each case before an Immigration Judge (see 8 CFR 1003.17). A Form EOIR-28 shall be filed either as an electronic form, or as a paper form, as appropriate.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal, with change, of a currently approved collection. EOIR is making several non-substantive changes to the current Form EOIR-28, including moving the word “alien” on the first page to the subsequent sentence; moving the “Law Firm/Organization” field to the line below the “Name” field, and moving the “Address” field below

“Law Firm/Organization; correcting EOIR website address, and updating the toll number and website address to obtain automated case information. EOIR is also making several minor but substantive changes to the current Form EOIR-28, to include clarifying the information required of reputable individuals; adding language explaining the types of appearances before the Immigration Court and corresponding obligations; and modifying the paragraph explaining what constitutes an appearance on behalf of a respondent.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR-28; the sponsoring component is Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing a respondent in immigration proceedings. *Other:* None. **Abstract:** This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing a respondent before the Immigration Court.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,536,921 respondents will complete the form annually with an average of 6 minutes per response.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 153,692 hours. It is estimated that respondents will take 6 minutes to complete the form.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:*

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Title	1,536,921	Annually .....	.....	6 minutes	153,692
Unduplicated Totals .....	.....	.....	.....	.....	hrs.

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 11, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-20973 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

[OMB 1140-0067]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 15, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public

burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Dawn Smith, Firearms Industry Programs Branch (FIPB) either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at fipb-informationcollection@atf.gov, or telephone at 304-267-1994.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: Firearms manufacturers record is a permanent record of firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into

the disposition any firearm in the course of a criminal investigation.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector-for or not for profit institutions.

The obligation to respond is mandatory under authority 18 U.S.C. 923(g) (1) (A).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 16,227 respondents will provide information to complete this form 615 annually, and it will take each respondent approximately 1 minute to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 179,058 total hours = 10,008,812 (total # of responses) * 1 minute (0.01789 hours).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minute)	Total annual burden (hours)
1140-0067	16,277	As Needed	10,008,812	1	179,058
Unduplicated Totals .....	.....	.....	.....	.....	.....

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: September 11, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-20974 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-XXXX]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Change of Address/Contact Information Form

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Justine Fuga, Attorney Advisor, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (571) 294-2272, EOIR.PRA.Comments@usdoj.gov or Justine.Fuga@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on July 3, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1125-XXXX. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks Paperwork Reduction Act (PRA) authorization for this information collection for three (3) years. OMB authorization for an information collection request (ICR) cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* New mandatory collection.
2. *Title of the Form/Collection:* Change of Address/Contact Information Form.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The agency form numbers are EOIR-33/IC and EOIR-33/BIA, and the Executive Office for Immigration Review is the Department component sponsoring the collection.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: Individuals and households.

Abstract: Pursuant to 8 U.S.C. 1229(a)(1)(F)(ii) and 8 CFR 1003.15(d)(2), individuals in EOIR immigration proceedings must provide the Immigration Court or Board of Immigration Appeals (BIA) with written notice of changes to the individual's address and contact information within five days of any change. To assist individuals in providing such written notice to the agency, EOIR created the Form EOIR-33. The form collects the individual's name, alien registration number (A-number), former and current contact information (address, phone number, and email address), and signature. The form instructs that an individual must serve a copy of the Form EOIR-33 on the opposing party. This information collection is required when an individual in EOIR immigration proceedings changes their address or contact information. The Form EOIR-33 is used by EOIR to maintain up to date mailing addresses and contact information of individuals who are subjects of immigration proceedings before the Immigration Courts and BIA so that individuals receive official communications about their immigration proceedings from EOIR and the opposing party. EOIR created two versions of the Form EOIR-33, one for submission to the Immigration Court (EOIR-33/IC) and one for submission to the BIA (EOIR-33/BIA). Both versions of the form are available in seven languages (English, Spanish, Chinese, Haitian Creole, Portuguese, Punjabi, and Russian) and may be filed with the agency and served on the opposing party electronically or by mail or hand delivery.

5. *Obligation to Respond:* Mandatory. See 8 U.S.C. 1229(a)(1)(F)(ii); 8 CFR 1003.15(d)(2).

6. *Total Estimated Number of Respondents:* 321,457.

7. *Estimated Time per Respondent:* 5 minutes.

8. *Frequency:* Annually.

9. *Total Estimated Annual Time Burden:* 26,681.

10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE 4W-218, Washington, DC 20530.

Dated: September 11, 2024.

Darwin Arceo,

*Department Clearance Officer for PRA, U.S.
Department of Justice.*

[FR Doc. 2024-20961 Filed 9-13-24; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0024]

Occupational Safety and Health Act Variance Regulations; 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 Occupational Safety and Health Act Variance Regulations.

DATES: Comments must be submitted (postmarked, sent, or received) by November 15, 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 <http://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-2009-0024) 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 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 efforts in obtaining information (29 U.S.C. 657).

The following sections describe who uses information collected under each requirement, as well as how they use it. The purpose of these requirements are Sections 6(b)(6)(A), 6(b)(6)(B), 6(b)(6)(C), 6(d), and 16 of the OSH Act, and 29 CFR 1905.10, 1905.11, and 1905.12, specify the procedures that employers must follow to apply for a variance from the requirements of an OSHA standard. OSHA uses the information collected under these procedures to: (1) evaluate the employer's claim that the alternative means of compliance would provide affected employees with the requisite level of health and safety protection; (2) assess the technical feasibility of the alternative means of compliance; (3) determine that the employer properly notified affected employees of the variance application and their right to a hearing; and (4) verify that the application contains the administrative

information required by the applicable variance regulation.

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 collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Occupational Safety and Health Act Variance Regulations Sections 6(b)(6)(A), 6(b)(6)(B), 6(b)(6)(C), 6(d), and 16 of the OSH Act, and 29 CFR 1905.10, 1905.11, and 1905.12. These statutory and regulatory provisions specify the requirements for submitting applications to OSHA for temporary, experimental, permanent, and national defense variances.

There are no adjustments or program changes associated with this ICR. The agency is proposing to retain the previous burden estimate of 366 hours.

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: Variance Regulations.

OMB Control Number: 1218-0265.

Affected Public: Businesses or other for-profits.

Number of Respondents: 12.

Number of Responses: 12.

Frequency of Responses: On occasion.

Average Time per Response: Various.

Estimated Total Burden Hours: 366.

Estimated Cost (Operation and Maintenance): \$0.

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>

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 materials must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2009-0024). You may supplement electronic submissions by uploading document files electronically.

Comments and submission 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 submissions, 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 is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC, on September 10, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-21017 Filed 9-13-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at ACVETEO@dol.gov. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at <https://www.dol.gov/agencies/vets/about/advisorycommittee>. This notice also describes the functions of the ACVETEO. This document is intended to notify the general public.

DATES: Tuesday, October 8, 2024 beginning at 9 a.m. and ending at approximately 12 p.m. (EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under the Meeting Updates tab. <https://www.dol.gov/agencies/vets/about/advisorycommittee>.

Notice of Intent to Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, September 27, 2024, via email to Mr. Gregory Green at ACVETEO@dol.gov, subject line "October 2024 ACVETEO Meeting." Individuals who will need accommodations for a disability to attend the meeting (e.g., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, September 27, 2024, by contacting Mr. Gregory Green at ACVETEO@dol.gov.

Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, ACVETEO@dol.gov, (202) 693-4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under title 38, U.S. Code, section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. 10. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking

to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

- 9:00 a.m. Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans' Employment and Training Service
- 9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
- 9:20 a.m. CX-HCD HVRP Findings Briefing
- 10:20 a.m. Break
- 10:30 a.m. Service Delivery, Underserved Population and Innovative Veteran Training and Employment Subcommittee breakout rooms
- 11:45 p.m. Public Forum, Gregory Green, Designated Federal Official
- 12:00 p.m. Adjourn

Signed in Washington, DC, this 10th day of September 2024.

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2024-20947 Filed 9-13-24; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-24-0020; NARA-2024-055]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on regulations.gov for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by November 1, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-24-0020/document>. This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

Federal eRulemaking Portal: <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via *regulations.gov*, you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-2902. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as "other" documents. Each records schedule contains a full description of the records

at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified

period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Energy, Southeastern Power Administration, Power Marketing and Contracts Program (DAA-0388-2024-0004).

2. Department of Health and Human Services, Department-Wide, Audiovisual Records (DAA-0468-2024-0001).

3. Department of Health and Human Services, Health Resources and Services Administration, Clofazimine Clinical Trial Records (DAA-0512-2024-0004).

4. Department of the Interior, United States Fish and Wildlife Service, Legacy Email (DAA-0022-2024-0001).

5. Department of State, Office of Management Strategy and Solutions, Consolidated Schedule Records of Strategy and Solutions (DAA-0059-2020-0025).

6. Department of Transportation, Federal Aviation Administration, Service Difficulty Reporting System (DAA-0237-2023-0006).

7. Department of Transportation, Office of the Secretary, Volpe Program and Project Records (DAA-0398-2024-0002).

8. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Geographic Information System Data (DAA-0571-2024-0002).

9. Department of the Treasury, Internal Revenue Service, Criminal NonCompliance Investigative Activities (DAA-0058-2024-0005).

10. Federal Energy Regulatory Commission, Agency-wide, Annual Report for Natural Gas Transactions (DAA-0138-2024-0015).

11. Federal Energy Regulatory Commission, Agency-wide, Holding

Companies Dockets (DAA–0138–2024–0013).

12. Library of Congress, Agency-wide, Budget Accounting and Financial Management 2024 Updates (DAA–0297–2024–0004).

13. Library of Congress, Agency-wide, Communication 2024 Updates (DAA–0297–2024–0010).

14. Library of Congress, Agency-wide, Copyright 2024 Updates (DAA–0297–2024–0001).

15. Library of Congress, Agency-wide, Mission and Organization 2024 Updates (DAA–0297–2024–0003).

William P. Fischer,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2024–20962 Filed 9–13–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The NCUA has approved the publication of a proposal to revise and extend for three years the NCUA Call Report (Form 5300), which is a currently approved information collection, for public comment. The NCUA is submitting the following extension and revision of the currently approved information collection to the OMB for review and clearance. The revisions are proposed to take effect with the March 31, 2025 report date.

DATES: Comments must be received on or before November 15, 2024.

ADDRESSES: You may submit written comments on the information collection by any of the following methods:

Federal Register Portal: <https://www.federalregister.gov>. Find this information collection by searching for “National Credit Union Administration”, then selecting “Past 90 days”, and scrolling through the list of documents.

Regulations.gov: <https://www.regulations.gov/search?filter=ncua>. Find this information collection by scrolling through the search results and looking for NCUA Call Report 2025–Q1.

Rulemakings and Proposals for Comment: <https://ncua.gov/regulation-supervision/rulemakings-proposals-comment> NCUA will post a link to the [regulations.gov](https://www.regulations.gov) web page where you can submit a comment by selecting Comment.

Mail: 1775 Duke Street, Suite 5067, Alexandria, Virginia 22314.

Fax: 703–519–8161.

Email: PRAComments@NCUA.gov.

Instructions: All submissions must be identified by the OMB Control Number 3133–0004 or by Document Number (Please send comments by one method only).

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Dacia Rogers at (703) 718–1155. You may also view the entire information collection request at www.reginfo.gov. Enhanced content is also available from the Notice on the **Federal Register** website (www.federalregister.gov). In addition, copies of the Call Report Form and Instructions can be obtained at the NCUA’s website (<https://ncua.gov/regulation-supervision/regulatory-reporting/cuonline>).

SUPPLEMENTARY INFORMATION: The NCUA proposes to extend for three years, with revision, the NCUA Form 5300 Call Report.

OMB Number: 3133–0004.

Title: NCUA Form 5300 Call Report.

Type of Review: Revision and extension of a currently approved collection.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions (FICUs) to make financial and other reports to the NCUA. Section 741.5 prescribes the method in which federally insured credit unions must submit this information to NCUA. NCUA Form 5300, Call Report, is used to file quarterly financial and statistical data through NCUA’s online portal, CUOnline. The financial and statistical information is essential to NCUA in carrying out its responsibility for supervising federal credit unions. This information facilitates NCUA monitoring of credit unions with share accounts insured by the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private sector: Not-for-profit institutions.

Respondents: All federally insured credit unions.

Estimated Number of Respondents: 4,533.

Estimated Average Burden per Response: 4.0 hours.

Estimated Total Annual Burden Hours: 72,528.

Reason for Change: The number of respondents decreased.

The proposed revisions to the Form 5300 instructions in this notice would not have a material impact on the existing burden estimates.

Legal Basis and Need for Collections: The Call Report Form 5300 information

collections are mandatory under 12 U.S.C. 1756, 1766, and 1782. Except for select sensitive items, the Call Report Form 5300 is not given confidential treatment.

Credit union data reported on the Call Report is essential to the NCUA supervision and regulation of federal credit unions. This information also facilitates the NCUA monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund.

Credit unions submit Call Report data to the NCUA quarterly. Call Report data serve a regulatory or public policy purpose by assisting the NCUA in fulfilling its mission of ensuring the safety and soundness of individual credit unions and the credit union system, protecting consumer financial rights, as well as agency-specific missions affecting federal and state-chartered credit unions, such as ensuring financial stability and administering share insurance.

Form 5300—Call Report—Proposed Changes

Schedule A, Section 4

(1) Adding two accounts for credit unions to report the number and amount of loans granted to credit union officials and senior executive staff year-to-date. This information will enhance NCUA’s offsite supervision.

(2) Removing two accounts for credit unions to report information related to Purchased Credit Impaired Loans. These accounts are no longer required to be disclosed by generally accepted accounting principles.

Schedule C, Section 4

(1) Removing three accounts where credit unions previously reported information related to FRB Paycheck Protection Program Lending Facility loans. The Paycheck Protection Program Lending Facility is no longer available.

(2) Adding one account for credit unions to report assets pledged to secure deposits, other funding arrangements, and other counterparty requirements. Adding this information will provide insight into the amount of total pledged assets and the availability of unencumbered assets to secure future borrowings.

Schedule D, Section 2

(1) Adding three accounts for credit unions to report the number and amount of member brokered non-maturity shares. NCUA will use this information to evaluate funding behavior and market trends.

(2) Adding five accounts for credit unions to report the number and

amount of member brokered term shares by remaining maturity. NCUA will use this information to evaluate funding behavior and market trends.

(3) Adding three accounts for credit unions to report the number and amount of nonmember brokered non-maturity deposits. NCUA will use this information to evaluate funding behavior and market trends.

(4) Adding five accounts for credit unions to report the number and amount of nonmember brokered term deposits by remaining maturity. NCUA will use this information to evaluate funding behavior and market trends.

(5) Adding five accounts for credit unions to report the number and amount of all other nonmember deposits by remaining maturity. Adding this information will enable a more complete assessment of nonmember deposits.

(6) Changed the caption for "Accounts held by nonmember public units" to "Nonmember Public Unit Deposits".

(7) Added an account for the amount of Nonmember Credit Union Deposits. NCUA will use this information to evaluate compliance with nonmember deposit regulatory requirements.

(8) Changed the caption for "Accounts Held by Member Public Units" to "Member Public Unit Deposits".

(9) Added an account for credit unions to report the amount of Reciprocal Deposits. NCUA will use this information to evaluate funding behavior and market trends as competition for deposits continues to innovate.

Schedule D, Section 3

(1) Added three accounts for credit unions to report the maturity distribution of total uninsured shares and deposits. NCUA will use this information to evaluate depositor behavior and the movement between uninsured non-maturity shares and share certificates.

Request for Comment: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the proposed revisions to the collection of information that are the subject of this notice are necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information as proposed to be revised, 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 the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024-20985 Filed 9-13-24; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

30-Day Notice for the "Arts Basic Survey"; Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed collection of information for the Arts Basic Survey. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting www.Reginfo.gov.

DATES: Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days from the date of publication of this Notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting, "National Endowment for the Arts" under "Currently Under Review;" then check

"Only Show ICR for Public Comment" checkbox. Once you have found this information collection request, select "Comment," and enter or upload your comment and information.

Alternatively, comments can be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- 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 the electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Arts Basic Survey.

OMB Control Number: 3135-0131.

Type of Review: Regular.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 24,000.

Estimated Annual Time per

Respondent (Hours): 0.04167.

Total Annual Burden Hours: 1,000.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): The total one-time cost to the federal government for all activities associated with this collection is \$390,000.

Description: This request is for clearance to conduct the 2025 Arts Basic Survey (ABS) (formally titled Annual Arts Benchmarking Survey, and Annual Arts Basic Survey). This survey will be conducted by the U.S. Census Bureau as a supplement to the Bureau of Labor

Statistic's Current Population Survey. The ABS will be conducted in February 2025 and serves as a supplement when the National Endowment for the Arts' (NEA) Survey of Public Participation in the Arts (SPPA) is not conducted. To date, the ABS was conducted six times from 2013 to 2020. One of the strengths of the ABS is that it will complement and supplement the information collected in the SPPA. The SPPA is the field's premiere repeated cross-sectional survey of individual attendance and involvement in arts and cultural activities, and is conducted approximately every five years. The ABS is much shorter than the SPPA, consisting of 12 to 14 questions per module that will be used to track arts participation over time.

As with the SPPA, the ABS data will be circulated to interested researchers and will be the basis for a range of NEA reports and independent research publications. Reports on these data will be made publicly available on the NEA's website or NEA-designated websites. The ABS will provide primary knowledge on the extent and nature of participation in the arts in the United States.

Dated: September 11, 2024.

RaShaunda Thomas,

Administrative Officer (Deputy), Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2024-20996 Filed 9-13-24; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold twenty-one meetings, by video conference, of the Humanities Panel, a Federal advisory committee, during October 2024. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: October 2, 2024

This video meeting will discuss applications on the topic of World Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

2. Date: October 3, 2024

This video meeting will discuss applications on the topic of Early Americans, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

3. Date: October 9, 2024

This video meeting will discuss applications on the topic of Literary Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. Date: October 10, 2024

This video meeting will discuss applications on the topic of Media Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

5. Date: October 15, 2024

This video meeting will discuss applications on the topics of Arts and Culture, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

6. Date: October 15, 2024

This video meeting will discuss applications on the topic of New Iowa State Humanities Council, for the State Humanities Councils General Operating Support Grants program, submitted to the Office of Federal/State Partnership.

7. Date: October 16, 2024

This video meeting will discuss applications on the topic of Indigenous Studies, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

8. Date: October 16, 2024

This video meeting will discuss applications on the topic of U.S.

History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

9. Date: October 17, 2024

This video meeting will discuss applications on the topic of African American History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

10. Date: October 17, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

11. Date: October 18, 2024

This video meeting will discuss applications on the topic of American Studies, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

12. Date: October 22, 2024

This video meeting will discuss applications on the topics of Music and Performing Arts, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

13. Date: October 22, 2024

This video meeting will discuss applications on the topic of Discussions, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

14. Date: October 23, 2024

This video meeting will discuss applications on the topic of Place Based, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

15. Date: October 24, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

16. Date: October 25, 2024

This video meeting will discuss applications on the topics of Arts and Culture, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

17. Date: October 29, 2024

This video meeting will discuss applications on the topic of World

History, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

18. Date: October 29, 2024

This video meeting will discuss applications on the topic of Indigenous Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

19. Date: October 30, 2024

This video meeting will discuss applications on the topic of U.S. History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

20. Date: October 30, 2024

This video meeting will discuss applications on the topic of World History, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

21. Date: October 31, 2024

This video meeting will discuss applications on the topics of Arts and Culture, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: September 10, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024-20920 Filed 9-13-24; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 16, 23, and 30, and October 7, 14, 21, 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 September 16, 2024

There are no meetings scheduled for the week of September 16, 2024.

Week of September 23, 2024—Tentative

There are no meetings scheduled for the week of September 23, 2024.

Week of September 30, 2024—Tentative

There are no meetings scheduled for the week of September 30, 2024.

Week of October 7, 2024—Tentative

Tuesday, October 8, 2024

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Jeffrey Lynch: 301-415-5041)

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 October 14, 2024—Tentative

There are no meetings scheduled for the week of October 14, 2024.

Week of October 21, 2024—Tentative

There are no meetings scheduled for the week of October 21, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 11, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024-21064 Filed 9-12-24; 11:15 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2024-0155]

Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Units 3 and 4; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption in response to a request dated March 22, 2024, as supplemented by letter dated August 14, 2024, from Southern Nuclear Operating Company, Inc. (SNC, the licensee), seeking an exemption from specific regulations that require periodic updates of the Vogtle Electric Generating Plant, Units 3 and 4, Updated Final Safety Analysis Reports.

DATES: The exemption was issued on September 9, 2024.

ADDRESSES: Please refer to Docket ID NRC-2024-0155 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0155. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The SNC exemption request dated March 22,

2024, and the supplemental letter dated August 14, 2024, are available in ADAMS under Accession Nos. ML24085A711 and ML24227A595, respectively.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-3100, email: John.Lamb@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: September 11, 2024.

For the Nuclear Regulatory Commission.

John Lamb,

Senior Project Manager, Plant Licensing Branch 2-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

Nuclear Regulatory Commission

Docket Nos. 52-025 and 52-026

Southern Nuclear Operating Company Vogtle Electric Generating Plant, Units 3 and 4; Exemptions

I. Background

Southern Nuclear Operating Company (SNC, the licensee) is the holder of Combined License Nos. NPF-91 and NPF-92 for the Vogtle Electric Generating Plant (Vogtle), Units 3 and 4, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. These facilities consist of two pressurized-water reactors located at the licensee's site in Burke County, Georgia, respectively.

II. Request/Action

In accordance with section 50.71 of title 10 of the *Code of Federal Regulations* (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR) submitted as part of the original license application] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." The regulation at Appendix D to 10 CFR part 52, Section X.B.2, regarding Final Safety Analysis Report (FSAR) updates, requires that, "An applicant or licensee who references this appendix shall submit updates to its DCD [design control document], which reflect the generic

changes to and plant-specific departures from the generic DCD made under Section VIII [Processes for Changes and Departures] of this appendix. These updates must be filed under the filing requirements applicable to final safety analysis report updates in 10 CFR 52.3 and 50.71(e)." The regulation at Appendix D to 10 CFR part 52, Section X.B.3.c, requires that, "After the Commission makes the finding required by 10 CFR 52.103(g), the reports and updates to the plant-specific DCD must be submitted, along with updates to the site-specific portion of the final safety analysis report for the facility, at the intervals required by 10 CFR 50.59(d)(2) and 50.71(e)(4), respectively, or at shorter intervals as specified in the license."

By letter dated March 22, 2024 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24085A711), as supplemented by letter dated August 14, 2024 (ML24227A595), SNC requested that the due date for submittal of the Vogtle, Units 3 and 4, UFSAR be by June 30 of every odd-numbered year, provided the interval between successive updates does not exceed 24 months.

III. Discussion

Pursuant to 10 CFR 50.12, "Specific exemptions," the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," including 10 CFR 50.71(e)(4) when: (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, whenever application of the regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule. The regulation at 10 CFR 52.7 indicates consideration of requests for exemption from requirements of the regulations of other parts in 10 CFR, which are applicable by virtue of 10 CFR part 52, shall be governed by the exemption requirements of those parts. Here, the exemption requested from 10 CFR part 50 is applicable by virtue of Appendix D to 10 CFR part 52, Appendix D, Sections X.B.2 and X.B.3.c, which incorporates the requirements of 10 CFR 50.71(e). Therefore, the Commission's consideration of requests for exemptions from the regulations in part 52 will be governed by 10 CFR 50.12.

A. Exemptions Are Authorized by Law

The regulation at 10 CFR 50.71(e)(4) requires revisions to UFSARs to be filed annually or 6 months after each refueling outage, provided the interval between successive updates does not exceed 24 months.¹ The underlying purpose of the regulation is to ensure that the licensee periodically updates its UFSAR so that the UFSAR remains up-to-date and accurately reflects the plant design and operation. The

¹ Appendix D to 10 CFR part 52, Sections X.B.2 and X.B.3.c require submissions of UFSAR at intervals required by 10 CFR 50.71.

proposed exemption would change the current UFSAR submittal schedule for Vogtle, Units 3 and 4, to a calendar-based schedule that would not exceed the maximum 24 months between successive updates as required by 10 CFR 50.71(e)(4). Submitting the UFSAR updates for Vogtle, Units 3 and 4, as proposed by June 30 of the odd year continues to meet the intent of the regulation and maintaining UFSAR information up-to-date. The NRC staff has determined that granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, these exemptions are authorized by law.

B. The Exemptions Present No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs so that the UFSARs remain up-to-date and accurately reflect the plant design and operation. The NRC has determined by rule that an update frequency not exceeding 24 months between successive updates is acceptable for maintaining up-to-date UFSAR content. While the regulation requires, in part, that UFSAR updates be submitted "annually or 6 months after each refueling outage," it allows the submission of such updates on a different schedule, "provided the interval between successive updates does not exceed 24 months." The requested exemptions also meet the underlying purpose of the rule for regulatory burden reduction. Additionally, based on the nature of the requested exemption and the requirement that updates will not exceed 24 months from the last submittal as described in this notice, no new accident precursors are created by the exemption; therefore, neither the probability nor the consequences of postulated accidents are increased. In conclusion, the requested exemptions do not result in any undue risk to the public health and safety.

C. The Exemptions Are Consistent With the Common Defense and Security

The requested exemptions from 10 CFR 50.71(e)(4) and Appendix D to 10 CFR part 52, Sections X.B.2 and X.B.3.c, would allow SNC to submit its periodic updates to the Vogtle, Units 3 and 4, UFSAR by June of odd-numbered years, not to exceed 24 months from the last submittal. Neither the regulation nor the proposed exemption has any relation to security issues. Therefore, the common defense and security is not impacted by the exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that an updated FSAR will be available to be used in subsequent reviews or activities concerning that facility performed by the licensee, the Commission, and other interested parties—with the original reporting requirement set such that

subsequent revisions shall be filed no less frequently than annually. (45 FR 30614; May 9, 1980). The rule change promulgated in August 1992 (57 FR 39358; August 31, 1992) was intended to provide a reduction in regulatory burden by providing licensees with the option to submit FSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. The rule change promulgated in 1992 provided the second option to submit the FSAR updates on a frequency not to exceed 24 months, tied to the refueling cycle upon the basis that the majority of the facility design changes are affected during the refueling outage and, therefore, the use of the refueling cycle provides for a current plant status document that is coordinated with plant changes. Currently, Vogtle, Units 3 and 4, submit a combined UFSAR for each site every 18 months, not to exceed 24 months from the last submittal.

SNC stated in the letter dated August 14, 2024:

With respect to decoupling the reporting frequency from refueling outages as discussed in the statements of consideration, in order to reduce outage time, the majority of facility design changes are no longer implemented during refueling outages, separating the implementation of the “majority of facility design changes” from refueling outages. Thus, associating the updates with a refueling outage is no longer necessary to meet the underlying purpose of the regulation, and providing updates on a periodic basis will continue to provide the updated information to the NRC on a timely basis. Therefore, the application of the regulation is not necessary to achieve the underlying purpose of the rule.

Tying the processing and submittal of the UFSAR to the refueling cycle is not necessary to achieve the underlying purpose of the rule because the majority of the facility design changes are not implemented during refueling outages. Therefore, as the licensee will be providing updated FSARs on a periodic, timely basis, consistent with the maximum 24-month interval between submittals as required by the regulation, the underlying purpose of the rule will still be met, which is to ensure that an updated FSAR will be available for use in subsequent reviews or activities concerning Vogtle Units 3 and 4. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements in these particular circumstances are not necessary to achieve the underlying purpose of the rule. Pursuant to 10 CFR 52.7, the Commission’s consideration of the request for exemptions from Appendix D to 10 CFR part 52, Sections X.B.2 and X.B.3.c. are governed by the exemption requirements of 10 CFR part 50, and as special circumstances are present for the exemption for 10 CFR 50.71(e), special circumstances are also present for the exemptions from Appendix D to 10 CFR part 52, Sections X.B.2 and X.B.3.c.

E. Environmental Considerations

With respect to the impact of the exemptions on the quality of the human environment, the NRC has determined that the issuance of the exemptions discussed

herein meets the eligibility criteria for categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement, set forth in 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.71(e)(4), and Appendix D to 10 CFR part 52, Sections X.B.2, and X.B.3.c) is an action that is a categorical exclusion, provided that certain specified criteria are met. The basis for NRC’s determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve no significant hazards consideration. The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the UFSAR. As set forth in that regulation, there are no significant hazard considerations because granting the exemptions would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Requirements in 10 CFR 51.22(c)(25)(ii)

There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or increase in the amounts of any effluents that may be released offsite.

Requirements in 10 CFR 51.22(c)(25)(iii)

There is no significant increase in individual or cumulative public or occupational radiation exposure. Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in individual or cumulative public or occupational radiation exposures.

Requirements in 10 CFR 51.22(c)(25)(iv)

There is no significant construction impact. Since the proposed action involves only a schedule change related to the timing for submittal of UFSAR updates, which is administrative in nature, it does not involve any construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

There is no significant increase in the potential for or consequences from radiological accidents. The proposed action involves only a schedule change related to the timing for submittal of UFSAR updates, which is administrative in nature and does not impact the potential for or consequences from radiological accidents.

Requirements in 10 CFR 51.22(c)(25)(vi)

The requirements from which the exemption is sought involve recordkeeping,

reporting, scheduling, or other requirements of an administrative, managerial, or organizational nature. The proposed action involves recordkeeping, reporting, and scheduling requirements, and other requirements of an administrative, managerial, or organizational nature because it is associated with the schedule for submittal of UFSAR updates pursuant to 10 CFR 50.71(e)(4) and meets that regulation’s requirement that the interval between successive updates does not exceed 24 months.

Based on the previously noted requirements, the NRC staff concludes that the proposed exemptions meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC’s issuance of these exemptions.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50.12, the requested exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. Also, special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present. Therefore, the NRC hereby grants SNC exemptions from the requirements of 10 CFR 50.71(e)(4) and 10 CFR part 52, Appendix D, Sections X.B.2 and X.B.3.c to allow SNC to file its periodic updates to the Vogtle, Units 3 and 4, UFSAR by June 30 of odd-numbered years, not to exceed 24 months from the last submittal.

The exemptions are effective upon issuance.

Dated: September 9, 2024,
For the Nuclear Regulatory Commission.
/RA/

Jamie Pelton, Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

[FR Doc. 2024–20972 Filed 9–13–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2024–631; Order No. 7492]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service document with the Commission concerning changes in rates of general applicability for Competitive products. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 25, 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 and Overview
- II. Initial Administrative Actions
- III. Ordering Paragraphs

I. Introduction and Overview

On September 5, 2024, the Postal Service filed notice with the Commission concerning time-limited changes in rates of general applicability

for Competitive products.¹ The Postal Service represents that, as required by 39 CFR 3035.102(b), the Notice includes an explanation and justification for the changes, the effective date, a schedule of the changed rates, and a schedule showing current prices that shall be restored. *See* Notice at 1. The changes are scheduled to take effect on October 6, 2024, and will roll back to current levels on January 19, 2025. *Id.*

Attached to the Notice is Governors’ Decision No. 24–4, which states the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3035.102.² The Governors’ Decision provides an analysis of the Competitive products’ price changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3035. Governors’ Decision No. 24–4 at 1. The attachment to the Governors’ Decision sets forth the

price changes and includes draft Mail Classification Schedule (MCS) language for Competitive products of general applicability, as well as the MCS sections with the prices that will be restored on January 19, 2025. No price changes are being made to Parcel Select, Special Services, or International Competitive products. *Id.* at 2.

The Notice also includes an application for non-public treatment of the attributable cost, contribution, and cost coverage data in the unredacted version of the annex to the Governors’ Decision, as well as the supporting materials for the data.³

Planned price adjustments. The Governors’ Decision includes an overview of the Postal Service’s planned price changes, which is summarized in the Table I–1 below.

TABLE I–1—PROPOSED PRICE CHANGES

Product name	Average price increase (percent)
Domestic Competitive Products	
Priority Mail Express	4.9
Retail	4.9
Commercial (Base and Plus)	4.9
Priority Mail	5.5
Retail	5.3
Commercial (Base and Plus)	5.6
USPS Ground Advantage	6.4
Retail	6.2
Commercial	6.5
Limited Overland Routes	10.3

Source: *See* Governors’ Decision No. 24–4 at 2.

II. Initial Administrative Actions

The Commission establishes Docket No. CP2024–631 to consider the Postal Service’s Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR 3040 subparts B and E. Comments are due no later than September 25, 2024. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission’s website at www.prc.gov.

Pursuant to 39 U.S.C. 505, Christopher C. Mohr is appointed to serve as Public Representative to represent the interests of the general public in this docket.

¹ USPS Notice of Time-Limited Changes in Rates of General Applicability for Competitive Products, September 5, 2024 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors’ Decision and record of proceedings

III. Ordering Paragraphs

- It is ordered:*
1. The Commission establishes Docket No. CP2024–631 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3035, and 39 CFR part 3040 subparts B and E.
 2. Comments are due no later than September 25, 2024.
 3. Pursuant to 39 U.S.C. 505, the Commission appoints Christopher C. Mohr to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
 4. The Secretary shall arrange for publication of this order in the **Federal Register**.

in the **Federal Register** at least 30 days before the effective date of the new rates.

² Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors’

By the Commission.
Erica A. Barker,
Secretary.
[FR Doc. 2024–21011 Filed 9–13–24; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–649 and CP2024–658; MC2024–650 and CP2024–659; MC2024–651 and CP2024–660; MC2024–652 and CP2024–661; MC2024–653 and CP2024–662; MC2024–654 and CP2024–663; MC2024–655 and CP2024–664; MC2024–657 and CP2024–666; MC2024–658 and CP2024–667; MC2024–659 and CP2024–668; MC2024–660 and CP2024–669; MC2024–661 and CP2024–670]

New Postal Products

AGENCY: Postal Regulatory Commission.

Decision No. 24–4), at 1 (Governors’ Decision No. 24–4).

³ Notice at 1–2; Notice, Application of the United States Postal Service for Non-Public Treatment of Materials, at 1.

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:* September 18, 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 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):* MC2024-649 and CP2024-658; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 316 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* September 18, 2024.

2. *Docket No(s):* MC2024-650 and CP2024-659; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 317 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* September 18, 2024.

3. *Docket No(s):* MC2024-651 and CP2024-660; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 318 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 18, 2024.

4. *Docket No(s):* MC2024-652 and CP2024-661; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 340 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 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:* September 18, 2024.

5. *Docket No(s):* MC2024-653 and CP2024-662; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 341 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 18, 2024.

6. *Docket No(s):* MC2024-654 and CP2024-663; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 319 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 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:* September 18, 2024.

7. *Docket No(s):* MC2024-655 and CP2024-664; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 320 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 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:* September 18, 2024.

8. *Docket No(s):* MC2024-657 and CP2024-666; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 321 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 18, 2024.

9. *Docket No(s):* MC2024-658 and CP2024-667; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 322 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 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:* September 18, 2024.

10. *Docket No(s):* MC2024-659 and CP2024-668; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 323 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through

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).

3040.135, and 39 CFR 3035.105; *Public Representative*: Almaroof Agoro; *Comments Due*: September 18, 2024.

11. *Docket No(s)*: MC2024–660 and CP2024–669; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 324 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 11, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Alain Brou; *Comments Due*: September 18, 2024.

12. *Docket No(s)*: MC2024–661 and CP2024–670; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 325 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 11, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: September 18, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–21010 Filed 9–13–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[*Docket Nos.* CP2022–134; MC2024–627 and CP2024–636; MC2024–629 and CP2024–638; MC2024–630 and CP2024–639; MC2024–632 and CP2024–641; MC2024–633 and CP2024–642; MC2024–634 and CP2024–643; MC2024–636 and CP2024–645; MC2024–637 and CP2024–646; MC2024–638 and CP2024–647; MC2024–639 and CP2024–648; MC2024–640 and CP2024–649; MC2024–641 and CP2024–650; MC2024–642 and CP2024–651; MC2024–643 and CP2024–652; MC2024–644 and CP2024–653; MC2024–645 and CP2024–654; MC2024–646 and CP2024–655; MC2024–647 and CP2024–656; MC2024–648 and CP2024–657]

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*: September 17, 2024.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>.

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.

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I. Introduction

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Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and

39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: CP2022–134; *Filing Title*: USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 42, Filed Under Seal; *Filing Acceptance Date*: September 9, 2024; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Almaroof Agoro; *Comments Due*: September 17, 2024.

2. *Docket No(s)*: MC2024–627 and CP2024–636; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 303 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 9, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Alain Brou; *Comments Due*: September 17, 2024.

3. *Docket No(s)*: MC2024–629 and CP2024–638; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 305 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 9, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Alain Brou; *Comments Due*: September 17, 2024.

4. *Docket No(s)*: MC2024–630 and CP2024–639; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 333 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 9, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: September 17, 2024.

5. *Docket No(s)*: MC2024–632 and CP2024–641; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 306 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 9, 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*: September 17, 2024.

6. *Docket No(s)*: MC2024–633 and CP2024–642; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 334 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance*

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).

Date: September 9, 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:* September 17, 2024.

7. *Docket No(s):* MC2024–634 and CP2024–643; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 307 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 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:* September 17, 2024.

8. *Docket No(s):* MC2024–636 and CP2024–645; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 335 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 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:* September 17, 2024.

9. *Docket No(s):* MC2024–637 and CP2024–646; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 308 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 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:* September 17, 2024.

10. *Docket No(s):* MC2024–638 and CP2024–647; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 336 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

11. *Docket No(s):* MC2024–639 and CP2024–648; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 309 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

12. *Docket No(s):* MC2024–640 and CP2024–649; *Filing Title:* USPS Request to Add Priority Mail Express, Priority

Mail & USPS Ground Advantage Contract 310 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* September 17, 2024.

13. *Docket No(s):* MC2024–641 and CP2024–650; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 337 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 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:* September 17, 2024.

14. *Docket No(s):* MC2024–642 and CP2024–651; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 338 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 17, 2024.

15. *Docket No(s):* MC2024–643 and CP2024–652; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 311 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

16. *Docket No(s):* MC2024–644 and CP2024–653; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 312 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

17. *Docket No(s):* MC2024–645 and CP2024–654; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 313 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

18. *Docket No(s):* MC2024–646 and CP2024–655; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 339 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 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:* September 17, 2024.

19. *Docket No(s):* MC2024–647 and CP2024–656; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 314 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* September 17, 2024.

20. *Docket No(s):* MC2024–648 and CP2024–657; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 315 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 9, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 17, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–20922 Filed 9–13–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100991; File No. SR–ISE–2024–44]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

September 10, 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 August 26, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 8 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges

and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%, with the exception that for Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 8, which relate to the Testing Facility. Options 7, Section 8(I) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 8(I) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the

proposal since 2017.⁶ However, since 2017, there has been notable inflation by various measures.

Between January 2017 and July 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 28.70%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index ("PPI"), inflation has increased by roughly 29% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.¹⁰ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange

⁶ See Securities Exchange Act Release No. 34-81903 (October 19, 2017), 82 FR 49450 (October 25, 2017) (SR-ISE-2017-91).

⁷ The Consumer Price Index ("CPI") is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

⁹ See U.S. Bureau of Labor Statistics ("BLS"), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

¹⁰ As noted by the BLS, the "Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output)." See *id.*

¹¹ Among the industry-specific PPIs is for North American Industry Classification System ("NAICS") Code 518210: "Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services." NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes "provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings." See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: "The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-ISE-2024-09). On April 29, 2024, the Exchange withdrew that filing and submitted SR-ISE-2024-16. The Exchange withdrew that filing on June 27, 2024 and replaced it with SR-ISE-2024-23. The instant filing replaces SR-ISE-2024-23, which was withdrawn on August 26, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99131 (December 11, 2023), 88 FR 86979 (December 15, 2023) (SR-ISE-2023-33). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100209 (May 22, 2024), 89 FR 46512 (May 29, 2024) (SR-ISE-2024-19).

⁵ The term "Remote Hands Services" refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.¹²

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees from 2017 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.¹⁴ The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2017. In addition to being far below cumulative inflation rates since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ Although the

Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5%/1% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the

objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2017 and August 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,¹⁹ producing a cumulative price increase of 28.70%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.²¹

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁰ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

²¹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

¹² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated August 2, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated August 3, 2024).

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁶ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR—CboeBYX-2024-012).

¹⁷ 15 U.S.C. 78f(b).

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.²² The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.²³ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.²⁴

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees from 2017 to 2024.²⁵ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support

customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.²⁶ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below inflation since 2017, however measured. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁷ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer

customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁸ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

²² As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output).” See *id.*

²³ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 518210 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

²⁴ See U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services* [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

²⁵ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²⁶ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

²⁸ See Nasdaq, *Options Market Statistics* (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."³⁰ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so.

Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.³¹ 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. 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-ISE-2024-44 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-ISE-2024-44. 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-ISE-2024-44 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20908 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100986; File No. SR-BX-2024-033]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

September 10, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

²⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁰ *Id.*

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on August 26, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH (“MITCH”) Wave Ports in Equity 7, Section 115, and certain fees related to its Testing Facilities in Equity 7, Section 130 by 5.5%, with certain exceptions.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-BX-2024-008). On April 29, 2024, the Exchange withdrew that filing and submitted SR-BX-2024-014. The Exchange withdrew BX-2024-14 and replaced it with SR-BX-2024-20. The instant filing replaces SR-BX-2024-20, which was withdrawn on August 26, 2024.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%. For Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave Ports⁶ in Equity 7, Section 115(g)(1) by 5.5%. In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Nasdaq Testing Facility. Equity 7, Section 130(d)(1)(C) provides that subscribers to the Nasdaq Testing Facility (“NTF”) located in Carteret, New Jersey shall pay a fee of \$1,000 per

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99124 (December 8, 2023), 88 FR 86715 (December 14, 2023) (SR-BX-2023-033). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100195 (May 21, 2024), 89 FR 46180 (May 28, 2024) (SR-BX-2024-017).

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

⁶ Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.

hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. In addition, Equity 7, Section 130(d)(1)(C) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the NTF shall pay a fee of \$1,055 per hand-off, per month for connection to the NTF and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2010, there has been notable inflation by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 44.25%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”),⁹ inflation has increased by roughly 43% during the same time period.¹⁰

Meanwhile, a more granular version of the PPI exists which measures

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

⁹ The PPI is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPIs measure price change from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective. See <https://www.bls.gov/ppi/overview.htm>.

¹⁰ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

inflation by category of industry.¹¹ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹² The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.¹³

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.¹⁴ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased

its fees every year.¹⁵ The proposed fees represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2010. In addition to being far below cumulative inflation rates since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁶ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁷

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to

make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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.

This belief is based on several factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 16 different venues for equities trading and 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by the CPI, producing a cumulative price increase of 44.25%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

Additionally, as measured by another gauge of inflation, the PPI has increased by roughly 43% during the same time period.²¹

¹¹ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output).” See id.

¹² Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes.”

¹³ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

¹⁴ See <https://www.bls.gov/web/empsit/cese3b3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/cese3b8a.htm> (Last updated July 5, 2024).

¹⁵ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁶ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁷ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

²¹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

Meanwhile, a more granular version of the PPI exists which measures inflation by category of industry. The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services. The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.²²

Finally, yet another gauge of inflation—AHE growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.²³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.²⁴ As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is far below inflation since 2010, however measured. In addition to being far below the inflation rate since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the

inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁵ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on

an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.²⁶ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁷ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁸ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."²⁹ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the

²² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

²³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²⁴ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

²⁷ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁸ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁹ *Id.*

Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.³⁰

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. 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-BX-2024-033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-BX-2024-033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the 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-BX-2024-033 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20904 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100982; File No. SR-NYSE-2024-40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.31(f)(1)

September 10, 2024.

On July 16, 2024, New York Stock Exchange LLC filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 7.31(f)(1) to permit Directed Orders to route to a broker-dealer algorithm with which the Exchange has established connectivity. The proposed rule change was published for comment in the **Federal Register** on August 1, 2024.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100609 (July 26, 2024), 89 FR 62815 (Aug. 1, 2024).

⁴ 15 U.S.C. 78s(b)(2).

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 15, 2024.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designates October 30, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSE-2024-40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20903 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100989; File No. SR-Phlx-2024-45]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Fees for Connectivity and Co-location Services

September 10, 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 August 26, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s fees for connectivity and co-

location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Equity 7, Section 3 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with

power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%. For Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7, Section 3, which relate to the Testing Facility. Equity 7, Section 3 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Equity 7, Section 3 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2015, there has been notable inflation by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99125 (December 8, 2023), 88 FR 86705 (December 14, 2023) (SR-Phlx-2023-53). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100197 (May 21, 2024), 89 FR 46185 (May 28, 2024) (SR-Phlx-2024-23).

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-Phlx-2024-08). On April 29, 2024, the Exchange withdrew that filing and submitted SR-Phlx-2024-019. The Exchange withdrew SR-Phlx-2024-019 and replaced it with SR-Phlx-2024-27. The instant filing replaces SR-Phlx-2024-027, which was withdrawn on August 23, 2024.

the Consumer Price Index,⁶ producing a cumulative price increase of 44.25%.⁷ Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”),⁸ inflation has increased by roughly 43% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists which measures inflation by category of industry.¹⁰ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange

believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers’ telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.¹²

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange’s Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.¹⁴ The proposed fees represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2010. In addition to being far below cumulative inflation rates since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to

compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange’s competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by the CPI, producing a cumulative price increase of 44.25%.¹⁷ Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

⁶ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

⁸ The PPI is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPIs measure price change from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective. See <https://www.bls.gov/ppi/overview.htm>.

⁹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

¹⁰ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry’s output sold outside the industry (that is, its net output).” See id.

¹¹ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes.”

¹² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

¹³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁶ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

¹⁷ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

Additionally, as measured by another gauge of inflation, the PPI has increased by roughly 43% during the same time period.¹⁸

Meanwhile, a more granular version of the PPI exists which measures inflation by category of industry. The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services. The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.¹⁹

Finally, yet another gauge of inflation—AHE growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.²⁰ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.²¹ As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is

far below inflation since 2010, however measured. In addition to being far below the inflation rate since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²² The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is

required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.²³ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁴ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁵ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable,

¹⁸ See U.S. Bureau of Labor Statistics ("BLS"), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

¹⁹ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

²⁰ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²¹ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²² See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

²³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

²⁴ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

and not unreasonably or unfairly discriminatory.”²⁶ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.²⁷

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-Phlx-2024-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-45 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20906 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, September 18, 2024, at 10:00 a.m. (ET).

PLACE: The meeting will be webcast on the Commission's website at www.sec.gov.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to certain rules of Regulation NMS under the Securities Exchange Act of 1934 to amend the minimum pricing increments for the quoting of certain NMS stocks, reduce the access fee caps, and enhance the transparency of better priced orders.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

²⁶ *Id.*

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 200.30-3(a)(12).

Dated: September 11, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–21061 Filed 9–12–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100994; File No. SR–NYSEARCA–2024–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees for the NYSE Arca Integrated Data Feed

September 10, 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 September 9, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “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 amend certain fees for the NYSE Arca Integrated data feed. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fees Schedule (“Fee Schedule”) to amend certain fees for the NYSE Arca Integrated data feed (“NYSE Arca Integrated Feed”) that would be operative November 1, 2024. Specifically, the Exchange proposes a one-time adjustment to certain of its fees for subscribing to the NYSE Arca Integrated Feed,³ with certain exceptions. The Fee Schedule includes the Exchange’s fees for subscribing to the NYSE Arca Integrated Feed, including an Access Fee, Redistribution Fee, Per User fees for Professional and Non-Professional Users, various categories of Non-Display Fees, a Non-Display Declaration Late Fee and a Multiple Data Feed Fee.⁴ With the exception of the Non-Professional User Fee, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee, the Exchange proposes to increase the remaining fees by up to 8.07% on a one-time basis.⁵

The Exchange currently charges the following fees to subscribe to the NYSE Arca Integrated Feed on a monthly basis: an Access Fee of \$3,000; a Redistribution Fee of \$3,750; a Professional User Fee and Non-Professional User Fee, on a per user

basis, of \$60 and \$20, respectively; a Non-Display Fee of \$10,500, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$31,500;⁶ a Non-Display Declaration Late Fee of \$1,000; and a Multiple Data Feed Fee of \$200. The Exchange proposes to increase the aforementioned fees on a one-time basis as follows: the Access Fee, from \$3,000/month to \$3,200/month; the Redistribution Fee from \$3,750/month to \$4,000/month; the Professional User Fee (Per User) from \$60/month to \$64/month; and the Non-Display Fee from \$10,500/month to \$11,300/month, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$33,900/month. The Exchange’s proposal to adjust fees excludes the Non-Professional User fee, the Non-Display Declaration Late fee and the Multiple Data Feed fee.

The NYSE Arca Integrated Feed was established more than a dozen years ago. Between the last price adjustment for the NYSE Arca Integrated Feed in January 2018 and 2023, there was a remarkable increase in the number of messages processed by the Exchange. The following message rate metrics illustrate this increase in throughput:

- *Peak Rate by Millisecond*: up approximately 59%
- *Average Rate per Millisecond*: up approximately 26%
- *Peak Rate per Second*: up approximately 127%
- *Average Rate per Second*: up approximately 47%
- *Peak Total Messages*: up approximately 31%
- *Average Total Messages*: up approximately 47%
- *Average Daily Volume*: up approximately 42%

With this increase in message traffic the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network). During the period between 2018 and 2023, advancements in system performance as measured by latency not only accommodated the high message traffic volumes, but stayed well ahead of

³ The proposed rule change establishing the NYSE Arca Integrated Feed was immediately effective on November 2, 2011. See Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR–NYSEArca–2011–78) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Offering a Market Data Product to Vendors and Subscribers That Combines Three Existing Market Data Feeds as Well as Additional Market Data From the Exchange Into One Integrated Product, the NYSE Arca Integrated Data Feed).

⁴ See Securities Exchange Act Release Nos. 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR–NYSEArca–2011–96) (establishing access fee and redistribution fee for NYSE Arca Integrated Feed); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (establishing non-display use fees for NYSE Arca Integrated Feed); and 76914 (January 14, 2016), 81 FR 3484 (January 21, 2016) (SR–NYSEArca–2016–03) (amending fees for NYSE Arca Integrated Feed by adopting a multiple data feed fee and discontinuing fees relating to managed non-display).

⁵ The Exchange proposes to exclude the Non-Display Declaration Late Fee and the Multiple Data Feed Fee from the proposed fee increase because unlike the other fees for subscribing to the NYSE Arca Integrated Feed, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee are administrative fees and are uniform across all of the Exchange’s market data products. The Exchange also proposes to exclude the Non-Professional User fees from the proposed fee increase because these fees are applicable to retail investors.

⁶ Category 1 Fees apply when a data recipient’s Non-Display Use of real-time market data is on its own behalf as opposed to use on behalf of its clients. Category 2 Fees apply when a data recipient’s Non-Display Use of real-time market data is on behalf of its clients as opposed to use on its own behalf. Category 3 Fees apply when a data recipient’s Non-Display Use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient’s own behalf and/or on behalf of its clients.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

it. The following latency metrics⁷ illustrate the increase in message processing speed, despite the significant message traffic growth:

- *Median*: down approximately 76%
- *Average*: down approximately 84%
- *Max*: down approximately 42%

The Exchange continues to invest heavily in enhancing its technology for the benefit and often at the behest of its customers, and these investments have increased the performance of the NYSE Arca Integrated Feed. Yet the Exchange has not adjusted any of the fees included in this proposal since 2018, to even partially offset the costs of maintaining and enhancing its market data offerings.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2018 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.⁸ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.⁹ About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹⁰ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the

Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS-518210 in the North American Industry Classification System.¹¹ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹²

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its proprietary market data products because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on Pillar, the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2018 to December 2023. The Data PPI had a starting value of 106.7 in

January 2018 and an ending value of 115.312 in December 2023, an 8.07% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 8.07% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase by up to 8.07% for the NYSE Arca Integrated Feed, which reflects an increase covering the entire period since the last adjustment was made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹³

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and

¹³ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁴ See *supra* discussion of system performance advancements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4), (5).

⁷ These measurements compare the time difference between events on the NYSE Arca matching engine and the time these events are published on the NYSE Arca Integrated Feed.

⁸ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

⁹ See <https://www.bls.gov/ppi/overview.htm>.

¹⁰ *Id.*

¹¹ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹² See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2018. However, in the years following the last fee increase the Exchange has made significant investments in upgrades to Exchange systems, enhancing the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered.

Between 2018 and 2023, the inflation rate is 3.93% per year, on average, producing a cumulative inflation rate of 21.28%.¹⁷ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 8.07%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over six years for the subject services. The proposed fee changes represent a modest increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its market data products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products.¹⁸ The goal of the enhancements discussed above, among

other things, is to provide faster and more consistent market data products, while ensuring quicker processing time. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Arca Integrated Feed. Any subscriber that chooses to subscribe to the NYSE Arca Integrated Feed would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period.

Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily subscribe to the NYSE Arca Integrated Feed, which would remain available for purchase by all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all subscribers of the NYSE Arca Integrated Feed in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that

would impose an undue burden on competition.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the NYSE Arca Integrated Feed. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for NYSE Arca Integrated Feed to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and paragraph (f) 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.

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-2024-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

¹⁷ See <https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1>.

¹⁸ See, e.g., Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR-NYSEARCA-2024-22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–2024–79, and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–20910 Filed 9–13–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100992; File No. SR–GEMX–2024–33]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

September 10, 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 August 30, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7,

Section 6 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%, with the exception that for Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR–GEMX–2023–17). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100210 (May 22, 2024), 89 FR 46476 (May 29, 2024) (SR–GEMX–2024–11).

⁵ The term “Remote Hands Services” refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–GEMX–2024–05). On April 29, 2024, the Exchange withdrew that filing and submitted SR–GEMX–2024–09. On June 27, 2024, the Exchange withdrew SR–GEMX–2024–09 and submitted SR–GEMX–2024–15. The instant filing replaces SR–GEMX–2024–15, which was withdrawn on August 26, 2024.

²⁰ 17 CFR 200.30–3(a)(12).

increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁶ However, since 2017, there has been notable inflation by various measures.

Between January 2017 and July 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 28.70%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.¹⁰ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange

believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers’ telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.¹²

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees from 2017 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange’s Data Center.

Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of the revenue it collects through such fees.¹⁴ The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2017. In addition to being far below cumulative inflation rates since 2017,

the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5%/1% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange’s existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the

⁶ See Securities Exchange Act Release No. 34–81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR–GEMX–2017–48).

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

⁹ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPFIS> (last updated August 23, 2024).

¹⁰ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry’s output sold outside the industry (that is, its net output).” See *id.*

¹¹ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT)

Infrastructure Provisioning Services,” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes.”

¹² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated August 2, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated August 3, 2024).

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPFIS#0>.

¹⁶ See, e.g., Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2017 and August 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,¹⁹ producing a cumulative price increase of 28.70%.²⁰ Said otherwise, the value of a dollar of revenue collected today is

worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index ("PPI"), inflation has increased by roughly 29% during the same time period.²¹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.²² The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.²³ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.²⁴

Finally, yet another gauge of inflation—average hourly earnings ("AHE") growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees

from 2017 to 2024.²⁵ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.²⁶ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below inflation since 2017, however measured. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁷ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

²⁵ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²⁶ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPFIS#0>.

²¹ See U.S. Bureau of Labor Statistics ("BLS"), Producer Price Index by Commodity: Final Demand [PPFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPFIS> (last updated August 23, 2024).

²² As noted by the BLS, the "Producer Price Index for an industry is a measure of changes in prices received for the industry's output sold outside the industry (that is, its net output)." See *id.*

²³ Among the industry-specific PPIs is for North American Industry Classification System ("NAICS") Code 518210: "Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services." NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes "provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings." See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: "The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes."

²⁴ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ The Consumer Price Index ("CPI") is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁰ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁸ This broad dispersion of

market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."³⁰ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory

organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.³¹ 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. 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

²⁸ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://>

www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary.

²⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁰ *Id.*

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-33 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-GEMX-2024-33. 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-GEMX-2024-33 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20909 Filed 9-13-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100990; File No. SR-MRX-2024-34]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

September 10, 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 August 26, 2024, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees

relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 7 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%, with the exception that for Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 7, which relate to the Testing

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-MRX-2024-04). On April 29, 2024, the Exchange withdrew that filing and submitted SR-MRX-2024-10. On June 27, 2024, the Exchange withdrew SR-MRX-2024-10 and submitted SR-MRX-2024-18. The instant filing replaces SR-MRX-2024-18, which was withdrawn on August 26, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99130 (December 11, 2023), 88 FR 87009 (December 15, 2023) (SR-MRX-2023-24). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100200 (May 21, 2024), 89 FR 46183 (May 28, 2024) (SR-MRX-2024-12).

⁵ The term "Remote Hands Services" refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning defective equipment to the manufacturer or customer.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 17 CFR 200.30-3(a)(12).

Facility. Options 7, Section 7 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 7 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁶ However, since 2017, there has been notable inflation by various measures.

Between January 2017 and July 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 28.70%.⁸ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”), inflation has increased by roughly 29% during the same time period.⁹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.¹⁰ The

most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹¹ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers’ telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.¹²

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees from 2017 to 2024.¹³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange’s Data Center.

Notwithstanding such significant inflation, the Exchange has not increased its connectivity fees during this time, thereby eroding the value of

received for the industry’s output sold outside the industry (that is, its net output).” *See id.*

¹¹ Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” *See* <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes.”

¹² *See* U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

¹³ *See* <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated August 2, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated August 3, 2024).

the revenue it collects through such fees.¹⁴ The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2017. In addition to being far below cumulative inflation rates since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁵ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5%/1% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.¹⁶

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and colocation products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing

¹⁴ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁵ *See* <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; *see also* <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁶ *See, e.g.*, Securities Exchange Act Release No. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012).

⁶ *See* Securities Exchange Act Release No. 34–81907 (October 19, 2017), 82 FR 49447 (October 25, 2017) (SR–MRX–2017–21).

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. *See* <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ *See* U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

⁹ *See* U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

¹⁰ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices

hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2017 and August 2024, the dollar had an average inflation rate of 3.42% per year, as measured by the Consumer Price Index,¹⁹ producing

a cumulative price increase of 28.70%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 77.70% of what it was worth in 2017.

Additionally, as measured by another gauge of inflation, the Producer Price Index ("PPI"), inflation has increased by roughly 29% during the same time period.²¹

Meanwhile, a more granular version of the PPI exists, which measures inflation by category of industry.²² The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.²³ The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2017 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 15.6%.²⁴

government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

²⁰ See U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CPIAUCSL>, August 23, 2024.

²¹ See U.S. Bureau of Labor Statistics ("BLS"), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 23, 2024).

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²⁴ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting

Finally, yet another gauge of inflation—average hourly earnings ("AHE") growth for Computing Infrastructure—increased 44% for non-managers and 38% for all employees from 2017 to 2024.²⁵ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.²⁶ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. The proposed fees represent a 5.5% increase (and for remote hands, a 1% increase) from the current fees, which is far below inflation since 2017, however measured. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁷ Although the Exchange believes it would be reasonable to increase fees by an amount equal to the full rates of inflation, however measured, to reestablish the initial value of the revenues it earns through its fees, the Exchange does not propose to do this, as the Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 29% or even 15%. Instead, the Exchange proposes a modest 5.5% increase, an amount that the Exchange believes to be reasonable on its face as it is significantly less than various measures of inflation discussed above.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in

and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 23, 2024).

²⁵ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²⁶ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁷ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ The Consumer Price Index ("CPI") is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various

fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁸ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁹ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."³⁰ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

²⁸ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁰ *Id.*

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.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.³¹ 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,

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-MRX-2024-34 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-MRX-2024-34. 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-MRX-2024-34 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20907 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100988; File No. SR-NASDAQ-2024-053]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

September 10, 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 September 4, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH ("MITCH") Wave Ports in Equity 7, Section 115, and certain fees related to Nasdaq Testing Facilities in Equity 7, Section 130 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exceptions of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%. For Remote Hands Services, at General 8, Section 1, the Exchange proposes to increase its fee by 1%, from \$150 to \$151.50 per hour.⁵

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-NASDAQ-2024-008). On April 29, 2024, the Exchange withdrew that filing and submitted SR-NASDAQ-2024-020. The Exchange withdrew SR-NASDAQ-2024-020 on June 27, 2024 and replaced it with SR-NASDAQ-2024-032. The instant filing replaces SR-NASDAQ-2024-032, which was withdrawn on August 23, 2024.

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99126 (December 8, 2023), 88 FR 86712 (December 14, 2023) (SR-NASDAQ-2023-052). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-99796 (March 20, 2024), 89 FR 21088 (March 26, 2024) (SR-NASDAQ-2024-013).

⁵ The term "Remote Hands Services" refers to the use of Nasdaq engineers to perform on-site technical support tasks in its Data Center on behalf of its co-located customers, including the following: (1) power cycling of equipment; (2) patching and plugging in cabling and circuits; (3) observing, describing or reporting on display indicators; (4) configuration of hardware components instructed by the customer; (5) diagnosis and repairs as instructed by the customer; (6) swapping hardware components with customer-supplied spares or upgrades; (7) troubleshooting heat related issues as instructed by the Customer; and (8) returning

Continued

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave Ports⁶ in Equity 7, Section 115(g)(1) by 5.5%. In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Nasdaq Testing Facility. Equity 7, Section 130(d)(1)(C) provides that subscribers to the Nasdaq Testing Facility (“NTF”) located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. In addition, Equity 7, Section 130(d)(1)(C) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the NTF shall pay a fee of \$1,055 per hand-off, per month for connection to the NTF and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. With the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and 2014. However, since 2010, there has been notable inflation by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by the Consumer Price Index,⁷ producing a cumulative price increase of 44.25%.⁸

defective equipment to the manufacturer or customer.

⁶ Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.

⁷ The Consumer Price Index (“CPI”) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The CPI represents all goods and services purchased for consumption by the reference population (U or W). BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups (food and beverages, housing, apparel, transportation, medical care, recreation, education and communication, and other goods and services). Included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

⁸ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

Additionally, as measured by another gauge of inflation, the Producer Price Index (“PPI”),⁹ inflation has increased by roughly 43% during the same time period.¹⁰

Meanwhile, a more granular version of the PPI exists which measures inflation by category of industry.¹¹ The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services.¹² The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers’ telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.¹³

⁹ The PPI is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPIs measure price change from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective. See <https://www.bls.gov/ppi/overview.htm>.

¹⁰ See U.S. Bureau of Labor Statistics (“BLS”), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

¹¹ As noted by the BLS, the “Producer Price Index for an industry is a measure of changes in prices received for the industry’s output sold outside the industry (that is, its net output).” See *id.*

¹² Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.” See <https://www.bls.gov/ppi/overview.htm>. BLS describes NAICS 51820 as follows: “The primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes.”

¹³ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal

Finally, yet another gauge of inflation—average hourly earnings (“AHE”) growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.¹⁴ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange’s Data Center.

Notwithstanding inflation, the Exchange historically has not increased its fees every year.¹⁵ The proposed fees represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is far below any of the above-described gauges of inflation since 2010. In addition to being far below cumulative inflation rates since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates even for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.¹⁶ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange’s costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in

Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

¹⁴ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

¹⁵ Unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁶ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

certain connectivity-related fees, based in part on similar rationale.¹⁷

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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.

This belief is based on several factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 16 different venues for equities trading and 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since 2015, and many of the fees date back to between 2010 and

2014. This means that such fees have fallen in real terms due to inflation, which has been notable by various measures.

Between January 2010 and August 2024, the dollar had an average inflation rate of 2.65% per year, as measured by the CPI, producing a cumulative price increase of 44.25%.²⁰ Said otherwise, the value of a dollar of revenue collected today is worth only 69.444% of what it was worth in 2010.

Additionally, as measured by another gauge of inflation, the PPI has increased by roughly 43% during the same time period.²¹

Meanwhile, a more granular version of the PPI exists which measures inflation by category of industry. The most apt of these industry categorizations measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services. The Exchange believes that this measure of inflation is particularly apt because many of the colocation and connectivity services that the Exchange offers to customers involve hosting and providing connections for its customers' telecommunications and information technology equipment collocated in its Data Center. Between January 2010 and July 2024, the inflation rate for hosting, ASP, and other IT infrastructure provisioning services was 17.4%.²²

Finally, yet another gauge of inflation—AHE growth for Computing Infrastructure—increased 77% for non-managers and 81% for all employees from 2010 to 2024.²³ This gauge of inflation is apt to the extent that the Exchange proposes to increase its fees for remote hands services, which are services performed by engineers and other technical personnel to support customer connectivity and colocation in the Exchange's Data Center.

Notwithstanding inflation, the Exchange historically has not increased

its fees every year.²⁴ As noted above, the Exchange has not increased the fees in this proposal for over 8 years (or in the case of services introduced in 2017, for over 6 years since the services were introduced). Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase (and for Remote Hands, a 1% increase) from the current fees, which is far below inflation since 2010, however measured. In addition to being far below the inflation rate since 2010, the Exchange also believes that the proposed 5.5%/1% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2022, the inflation rate, as measured by the CPI, was 8.00% and it was 9.47%, as measured by the PPI.²⁵ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by 17% or more than 40% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2010. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the

²⁰ See <https://www.officialdata.org/us/inflation/2010?amount=1> (Last updated August 21, 2024).

²¹ See U.S. Bureau of Labor Statistics ("BLS"), Producer Price Index by Commodity: Final Demand [PPIFIS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PPIFIS> (last updated August 22, 2024).

²² See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services [PCU5182105182105], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU5182105182105> (last updated August 22, 2024).

²³ See <https://www.bls.gov/web/empsit/ceseeb3a.htm> (Last updated July 5, 2024); <https://www.bls.gov/web/empsit/ceseeb8a.htm> (Last updated July 5, 2024).

²⁴ As noted above, unregulated competitors providing connectivity and co-location services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

²⁵ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>; see also <https://fred.stlouisfed.org/series/PPIFIS#0>.

¹⁷ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-ChoeBXX-2024-012).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade both equities and options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter markets.

There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share.²⁶ No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.²⁷ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity

and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."²⁸ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."²⁹ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that

they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services 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.³⁰

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. 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-2024-053 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-2024-053. This file number should be included on the

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

²⁷ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

²⁸ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁹ *Id.*

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-053 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20905 Filed 9-13-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, September 19, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: September 12, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21117 Filed 9-12-24; 4:15 pm]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 12537]

Proposed Establishment of Federally Funded Research and Development Centers—Supplemental Notice

ACTION: Notice.

SUMMARY: The United States Department of State (DoS), Bureau of Administration, intends to sponsor Federally Funded Research and Development Centers (FFRDC) to facilitate public-private collaboration for numerous activities related to diplomacy and modernization. This is a supplemental notice to address outstanding public comments received through August 15, 2024.

DATES: Written comments are now closed. This will be the fourth (4th) and final notice in this series.

SUPPLEMENTARY INFORMATION: The Department of State leads US engagement around the world building alliances and partnerships; facing up to aggression; aiding and supporting emerging democracies; and preserving US interests abroad. In a rapidly changing world with shifting politics, accelerated economic developments, global challenges such as climate change, and the increasing role digitization plays for both opportunity and threats, the Department is committed to leading through both policy and operational engagement on behalf of the nation and our government.

In a letter introducing the Department of State and U.S. Agency for International Development Joint Strategic Plan for 2022–2026, Secretary Blinken stated, “we are working to modernize and equip the Department and USAID to lead on 21st-Century challenges and deliver for the American people.”

Achieving U.S. goals for global leadership over the next decade will require the following:

- A diplomatic corps to use data in new ways to develop more foresight and insight, to inform policy options, to take actions and measure their effectiveness;
 - New cross-sector partnerships and coalitions;
 - Intergovernmental partnerships with the Department of Defense, the intelligence agencies, the Departments of Commerce, Treasury, Homeland Security, and Health and Human Services, and cross-government Councils (e.g., National Economic Council, National Security Council);
 - New capabilities to plan, manage and execute initiatives and programs;
 - A workforce that uses digital technology as tools to advance democracy and protect our interests and counter the use of these same technologies as a threat; and
 - An organization and operation that is agile and adaptive to a changing environment; attractive to new talent; and fosters long-term commitment between the organization and its people.
- The Department requires long-term partnerships with organizations that can bring research, development, innovation, and support needed to guide the leadership and employees through this transformative period in our history. This will allow the Department to focus on the mission at hand, while adopting and integrating changes necessary to make consistent progress on these goals and surge, when needed, to address urgent issues that require data, partnerships, technology

³¹ 17 CFR 200.30-3(a)(12).

and insights applied in near-term operational situations.

To meet this need, the Department seeks to establish and sponsor one FFRDC under the authority of 48 CFR 35.017.

FFRDC Focus Areas

The FFRDC will be available to provide a wide range of support including, but not limited to the activities listed below:

- *Diplomatic Innovation and Modernization (DIM)*

The purpose of the DIM is to strengthen global engagement and humanitarian outcomes by pioneering research and development initiatives that address emerging threats and foster international cooperation.

- *Global CyberTech Solutions (GCS)*

The purpose of the GCS is to enhance global stability through cutting edge research and development in IT, cyber defense, systems engineering, and data analytics.

- *Global Operations and Acquisitions (GOA)*

The purpose of the GOA is to advance diplomatic effectiveness through collaborative and cutting-edge acquisition methodologies and tools, and data assessments of broad scale Departments needs, international cooperation, and innovative operational practices.

The FFRDC will partner with the Department of State in the design and pursuit of mission goals; provide rapid responsiveness to changing requirements for personnel in all aspects of strategic, technical and program management; recognize Government objectives as its own objectives; partner in pursuit of excellence in public service; and allow for use of the FFRDC by non-sponsors. The Department is publishing this notice in accordance with 48 CFR 5.205(b) of the Federal Acquisition Regulations (FAR).

Planned Request for Information/ Sources Sought Notice

Based on public comments from the first three notices, the Department has issued a Request for Information/ Sources Sought notice via *SAM.gov*. That notice along with all response instructions can be found at the following link: <https://SAM.gov/opp/1550c30441fc4879a3b6b5bbbca729f0/view>.

Public Comments

During the comment period from May 17–August 15, 2024, the Department

submitted three notices for publication, which were subsequently posted; however, due to the publishing delay for the third notice, the Department is publishing this supplemental notice to address comments received between August 9 and August 15, 2024.

The Department received seventeen (17) comments during this portion of the public comment period. Three (3) comments were received via the **Federal Register** public comment function without content or without context for the information received. The remaining comments have been addressed as described below:

Eleven (11) comments expressed interest in submitting responses, capabilities, or eventually proposals for the FFRDCs. The Department appreciates the interest from industry and looks forward to these organizations' responses to the Sources Sought Notice.

Two (2) comments voiced concerns about the scope and clarity of the focus areas. The **Federal Register** notices included a high-level list of focus areas. The detailed list of functional areas is fully presented in the Draft Scope of Services document attached to the Sources Sought Notice. This should provide insight into the full scope of the FFRDC program. The Department is conducting market research internally and externally to continue to solidify the final scope of the FFRDC to ensure the most effective FFRDC support.

Six (6) of the commenters provided feedback on the focus areas listed in the previous notices. The Department appreciates this thoughtful input, and the draft Scope of Services document attached to the Sources Sought Notice reflects the Department's consideration of these suggestions. The Department will continue to analyze this feedback with other market research information to ensure the most precise and accurate FFRDC scope definition prior to formal solicitation.

The Department also received six (6) responses that provided input on the FFRDC structure in areas such as procurement considerations, number of centers, sponsoring bureaus, and governance processes. The Department will continue to evaluate this feedback to determine internally the ideal processes to govern the FFRDC.

Michael W. Derrios,

Deputy Assistant Secretary for Acquisition & Senior Procurement Executive, U.S. Department of State.

[FR Doc. 2024–20919 Filed 9–13–24; 8:45 am]

BILLING CODE 4710–24-P

DEPARTMENT OF STATE

[Public Notice: 12538]

Notice of Renewal of Advisory Committee Charter

AGENCY: Department of State.

ACTION: Charter renewal.

SUMMARY: The Department of State has renewed the Charter of the U.S. National Commission for the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

FOR FURTHER INFORMATION CONTACT: Paul Mungai, U.S. Department of State, Telephone: (202) 663–2407; email: MungaiP@state.gov.

SUPPLEMENTARY INFORMATION: The U.S. National Commission for UNESCO, which operates pursuant to 22 U.S. Code 2870 and the requirements of the Federal Advisory Committee Act (FACA), is a Federal Advisory Committee that provides recommendations to the U.S. Department of State.

The Commission's recommendations relate to the formulation and implementation of U.S. policy towards UNESCO on matters of education, science, culture, and communication and information. Also, the Commission functions as a liaison with organizations, institutions, and individuals in the United States interested in the work of UNESCO.

The Commission is comprised of representatives of American organizations and institutions which have an interest in education, science, communications and culture, including professional associations, educational institutions, and non-governmental organizations (NGOs), as well as representatives of federal, state and local governments, and at-large individuals. The Commission meets to provide information on UNESCO related topics and make recommendations.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2024–20914 Filed 9–13–24; 8:45 am]

BILLING CODE 4710–19-P

DEPARTMENT OF STATE

[Public Notice: 12535]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “The Time is Always Now: Artists Reframe the Black Figure” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby

determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “The Time is Always Now: Artists Reframe the Black Figure” at the Philadelphia Museum of Art, Philadelphia, Pennsylvania; the North Carolina Museum of Art, Raleigh, North Carolina; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PA, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–20978 Filed 9–13–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration; Aviation Rulemaking Advisory Committee; Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Renewal of the Aviation Rulemaking Advisory Committee Charter.

SUMMARY: FAA announces the charter renewal of the Aviation Rulemaking Advisory Committee (ARAC), a Federal advisory committee that works with industry and the public to improve the development of the FAA’s regulations.

This charter renewal took effect on September 14, 2024, and expires after 2 years unless otherwise renewed.

FOR FURTHER INFORMATION CONTACT: Aliyah Duckett, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–7489; email 9-awarac@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), the FAA is giving notice of the charter renewal for the ARAC. ARAC provides advice and recommendations to FAA on regulatory matters. ARAC is composed of representatives from member organizations and associations that represent the various aviation industry segments. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. For ARAC-related documents (*i.e.*, charter, meeting packet, recommendation reports), visit the ARAC page on the FAA Committee website at http://www.faa.gov/regulations_policies/rulemaking/committees/documents/.

Issued in Washington, DC, on September 11, 2024.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2024–21040 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Industry Day Meeting, and Request for Comment on the Draft Engineering Brief 105A for Vertiport Design

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of industry day meeting, and request for comment.

SUMMARY: The FAA’s Office of Airports is announcing the availability of and requesting comments on the update to Engineering Brief (EB) 105 for Vertiport Design (referred to as EB 105A). This draft EB provides updated interim safety standards for aviation facilities that electric Vertical Take-Off and Landing (eVTOL) aircraft use for take-off and landing. These types of aviation facilities are commonly referred to as ‘vertiports’. Draft EB 105A will be posted Friday, September 20, 2024, on the FAA website at: https://www.faa.gov/airports/engineering/engineering_briefs/drafts/. A comment

matrix will also be available for members of the public to use to submit written comments. The FAA will hold a virtual industry day meeting on the draft EB 105A on Monday, September 30, 2024. Registration is required to attend. See the **DATES** and **ADDRESSES** sections for more information.

DATES:

Comments on draft EB 105A: Please submit comments no later than Friday, October 18, 2024.

Virtual industry day: The virtual industry day will be held on Monday, September 30, 2024, 11:00 a.m.–4:00 p.m., EDT. See the **ADDRESSES** section for information about registering.

ADDRESSES:

Comments on Draft EB 105A: Please submit comments or questions regarding the draft EB 105A by email to the Federal Aviation Administration at vertiports@faa.gov.

Registration for industry day: Pre-registration is necessary to receive the link for the virtual industry day meeting. Please visit https://www.faa.gov/airports/engineering/engineering_briefs/drafts/ for registration information or to request special accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bassey, Office of Airports, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, phone: (202) 267–7605, email: Robert.Bassey@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA developed draft EB 105A to update the interim safety standards for the design and operation of aviation facilities that electric Vertical Take-Off and Landing (eVTOL) aircraft use for take-off and landing. These take-off and landing facilities for eVTOL aircraft are commonly referred to as ‘vertiports’.

EB 105A is a revision to the original EB 105 issued on September 21, 2022. Principal changes include adjustments to the sizing of the vertiport geometry, information about aircraft parking, and the creation of a protection area to address aircraft downwash and outwash. The agency has and continues to conduct operational testing with a number of Original Equipment Manufacturers developing eVTOL aircraft. The updates identified in EB 105A were informed through operational testing findings.

The FAA will hold a virtual industry day meeting on the draft EB 105A on September 30, 2024, at 11:00 a.m. EDT. During this meeting, the FAA will provide an overview of the EB update, discuss some critical aspects of the draft currently under consideration, and provide an opportunity for attendees to

ask questions about it. Interested parties who wish to participate in the industry day meeting will need to register and can access information on how to register on the web page where the draft EB is posted.

The FAA is seeking public comments on the draft EB 105A for Vertiport Design to help inform the development of the final EB update. The draft EB will be available starting Friday, September 20, 2024, on the FAA website at: https://www.faa.gov/airports/engineering/engineering_briefs/drafts/.

Members of the public should use the comment matrix provided with the draft EB to submit comments. Completed comment matrices should be submitted to the email address listed in the **ADDRESSES** section. The FAA will not accept comments during the industry day meeting.

The FAA would like to publish a final EB 105A for Vertiport Design later this year, following the adjudication of comments received during this public comment period. The FAA intends to publish a new Advisory Circular (AC) on Vertiport Design in 2025 to provide additional guidance in this area. Once the FAA issues a new AC, the agency will cancel EB 105A.

Dated: September 10, 2024.

Keri L. Lyons,

Manager, Office of Airports Emerging Entrants Division.

[FR Doc. 2024-20915 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal agencies that are final agency actions. These actions relate to the proposed Interstate 75 (I-75) Improvements Project Development and Environment (PD&E) Study (Financial Management Number 452074-2). The proposed I-75 Improvements project will reduce congestion and improve reliability on I-75 from south of State Road (S.R.) 44 to S.R. 200, a distance of approximately 22.5 miles. Improvements consist of adding auxiliary lanes between interchanges,

bridge overpass replacement and widening, and the construction of stormwater management facilities. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before February 13, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Finding of No Significant Impact and additional project documents can be viewed and downloaded from the project website at: <https://www.cflroads.com/project/452074-2>, or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT:

Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414-4316; email: Jennifer.Marshall@dot.state.fl.us.

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed highway improvement project. The actions by FDOT and other Federal agencies on the project, and the laws under which such actions were taken are described in the Finding of No Significant Impact approved on August 28, 2024, and in other project records for the listed project. The Finding of No Significant Impact and other documents for the listed project are available by contacting FDOT at the address provided above. The project subject to this notice is:

Project Location: The project is located in Marion and Sumter County, Florida, and partially within the City of Ocala. The project limits are I-75 from south of S.R. 44 to S.R. 200, a distance of approximately 22.5 miles.

Project Actions: This notice applies to the Finding of No Significant Impact and all other Federal agency licenses, permits, or approvals for the listed

project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321*et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air:* Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901-4918]; 23 CFR 772.

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302-200310].

5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361-1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703-712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801-1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)-470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501-312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013; 18 U.S.C. 1170].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000 d-2000d-1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

8. *Wetlands and Water Resources:* Clean Water Act (section 319, section 401, section 404) [33 U.S.C. 1251-1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501-3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451-1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f-300j-26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001-4130].

9. *Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)* [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: September 11, 2024.

Karen M. Brunelle,
*Director, Office of Project Development,
Federal Highway Administration,
Tallahassee, Florida.*

[FR Doc. 2024–20989 Filed 9–13–24; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0244]

Hours of Service: Denial of Application for Exemption; Arbert Ibraimi

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application of Mr. Arbert Ibraimi on behalf of GTLM Transport Inc. (GTLM), requesting an exemption from the requirement to use an electronic logging device (ELD) for maintaining driver records of duty status (RODS). FMCSA evaluated the application and public comments and determined that GTLM did not sufficiently demonstrate how its commercial motor vehicle (CMV) operations would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, FMCSA Driver, and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–385–2415; bernadette.walker@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA–2023–0244” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer—Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in their the docket, go to www.regulations.gov, insert docket number “FMCSA–2023–0244” in the keyword box, click “Search,” and choose the document to review.

If you do not have access to the internet, you may view the docket by visiting Docket 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 Docket 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 analysis. 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 achieve 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 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 reason for the denial (49 CFR

381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation(s) Requirements

With limited exceptions, the HOS regulation at 49 CFR 395.8(a)(1)(i) requires motor carriers operating CMVs to install and require each of its drivers to use an ELD to record the driver’s duty status.

Applicant’s Request

GTLM requested a one-year exemption from the ELD requirement in 49 CFR 395.8(a)(1)(i). The applicant stated that it is a new business, operating a single CMV as an owner-operator, and has limited funds to support the purchase of an ELD. The applicant stated that it would use the funds saved from not purchasing and installing an ELD, to monitor the safety of operations and to incorporate safety management controls into its operation.

Applicant’s Method To Ensure an Equivalent or Greater Level of Safety

GTLM stated that an equivalent or greater level of safety will be achieved under the exemption because, since the carrier is owner-operated, “the operational safety impact will be virtually identical and manageable.” GTLM also stated that funds that would be used to purchase and install an ELD could be invested in a safety management control system from which the company would benefit more in its initial stages (e.g., training on current safety topics.)

IV. Public Comments

On March 1, 2024, FMCSA published a notice of GTLM’s application and requested public comments (89 FR 15258). The agency received a total of 122 comments: 62 in support, 32 in opposition, and 28 taking no position either for or against granting the exemption. Of the 62 comments in support of granting the exemption, five were from trucking companies. Commenters who supported granting the exemption expressed general opposition to ELDs. They stated that ELDs are too expensive, and they create a stressful environment for drivers who feel pressured to arrive at their destinations before running out of hours. Some commenters also stated that ELDs have made CMV operations less safe because they cause drivers to rush. Jimmy Haynes stated, “After 35 years of driving the elds are making drivers take unnecessary risks to maximize time. Instead of being able to take naps or breaks when needed the elds make you push through to

situations you wouldn't normally." RJ's Trucking & Logistics LLC stated, "I believe he should be exempt and the requirement should be discontinued. ELD does nothing but give brokers more power. Some use this as a way to fine you a load. If its [sic] about safety then why do some still let you get a load. There is nothing wrong with paper logs."

Of the 24 comments filed opposing the exemption, six were from trucking companies. The commenters who opposed granting the exemption emphasized placing safety first. Joint comments filed by the Truck Safety Coalition, Citizens for Reliable and Safety Highways, and Parents Against Tired Truckers stated that safety "must be the top priority, not the last to be addressed with whatever funds remain available. Safety has a cost, and it must be paid by all industry stakeholders if meaningful progress will be made in reducing truck crash deaths and injuries." John Bowlby stated, "This exemption should not be granted. ELDs make it harder for drivers to cheat. A new business tight on cash flow would be tempted to cheat to make more money." Some commenters also cited the relatively low cost of ELDs. An anonymous commenter stated, "I pay \$300 a year for ELD. If you can't afford that, how are you going to pay for safety related items. 1 tire costs more than that."

V. FMCSA Safety Analysis and Decision

FMCSA evaluated GTLM's application and the public comments and denies the exemption request. GTLM failed to establish that it would likely achieve a level of safety equivalent to, or greater than, the level achieved without the exemption. ELDs help drivers more accurately track driving time to ensure compliance with HOS regulations, which are designed to help drivers maintain alertness while operating CMVs. Additionally, ELDs decrease the likelihood that the RODS could be altered after the date the records were generated, without leaving an electronic trail. For these reasons, and as discussed in the amended rulemaking proceedings that established the ELD requirements [80 FR 78292], the Agency believes the level of safety provided by the use of ELDs is likely greater than that provided by the use of paper logs as an alternative. GTLM did not propose safety countermeasures to compensate for the lower level of safety that paper logs entail. Economic difficulties, such as those that GTLM described, do not justify the granting of an exemption.

For the reasons stated, GTLM's exemption application is denied.

Vincent G. White,

Deputy Administrator.

[FR Doc. 2024-20931 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0026]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 21 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing material in the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2024-0026) in the keyword box, and click "Search." Next, choose the only notice listed, and click "Browse 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 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

FMCSA received applications from 21 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification. The Agency's decision regarding these exemption applications is based on the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8). Therefore, the 21 applicants in this notice have been denied exemptions

from the physical qualification standards in § 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 21 applicants do not meet the minimum time requirement for being seizure-free, either on or off anti-seizure medication:

Nolan Beck (CA)
Christina Branch (NC)
Marqui Bunting (WV)
Michael Burke (SC)
Gostave Dessources (NJ)
Antonio Dominguez (TX)
Justin Elliott (OH)
Tyler Fleischauer (MN)
Ronald Glasener (TN)
Patrick Grimes (PA)
Timothy Howard (NY)
Dylan Huynh (FL)
Zachary Lee (MI)
Trent May (MD)
Christian Mouton (LA)
Steve Patterson (NC)
Kevin Pustelak (PA)
Antonio Reddick (FL)
Christopher Aaron Rowe (VA)
Steven Shirley (UT)
Andrew Stevens (AR)

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-20926 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0015]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 16, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA-2024-0015 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov/, insert the docket number (FMCSA-2024-0015) in the keyword box and click "Search." Next, choose the only notice listed, and click on the "Comment" button. 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:** West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

- **Fax:** (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments. **FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2024-0015), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so 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-2024-0015>. Next, sort the results

by "Posted (Newer-Older)," choose the only notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2024-0015) in the keyword box and click "Search." Next, choose the only notice listed, and click "Browse 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 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR

391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, “Qualification of Drivers; Application for Exemptions; National Association of the Deaf,” (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency’s physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency’s physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Matthew Adams

Matthew Adams, 58, holds a regular driver’s license in Indiana.

Calvin Anderson

Calvin Anderson, 63, holds a class ABCDM commercial driver’s license (CDL) in Wisconsin.

Vanessa Arnao

Vanessa Arnao, 50, holds a class D driver’s license in Virginia.

Roxanne Blind

Roxanne Blind, 41, holds a class C driver’s license in Texas.

Wayne Haffner

Wayne Haffner, 79, holds a class A CDL in North Carolina.

David Hollandsworth

David Hollandsworth, 67, holds a class A CDL in Indiana.

Mara Jean Francois

Mara Jean Francois, 39, holds a class D driver’s license in Connecticut.

Abdifatah Jimale

Abdifatah Jimale, 31, holds a class D driver’s license in Minnesota.

Kang Lin

Kang Lin, 54, holds a class A driver’s license in New York.

Manasseh O’Brien

Manasseh O’Brien, 44, holds a class B CDL in New York.

Joshua Ofiu

Joshua Ofiu, 37, holds a class C driver’s license in California.

Lee Smith

Lee Smith, 34, holds a class D driver’s license in Idaho.

Edwin Toscano

Edwin Toscano, 32, holds a class A driver’s license in Georgia.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–20933 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0025]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate

commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before October 16, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2024–0025 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number (FMCSA–2024–0025) in the keyword box and click “Search.” Next, choose the only notice listed, and click on the “Comment” button. 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:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, fmcamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2024–0025), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so 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-2024-0025>. Next, choose the only notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2024-0025) in the keyword box and click “Search.” Next, choose the only notice listed, and click “Browse 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 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum

duration of a driver’s medical certification.

The 12 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person’s condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication, and seizure-free for 10 years, may be qualified to operate a

CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a notice of final disposition titled, “Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,” (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency’s Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Millie Baker

Millie Baker is a 50-year-old class O license holder in Michigan. They have a history of epilepsy and have been seizure free since 2008. They take anti-seizure medication with the dosage and frequency remaining the same since 2010. Their physician states that they are supportive of Millie Baker receiving an exemption.

Todd Burrey

Todd Burrey is a 49-year-old class D license holder in Ohio. They have a history of general idiopathic epilepsy and have been seizure free since 2012. They take anti-seizure medication with the dosage and frequency remaining the same since June 2022. Their physician states that they are supportive of Todd Burrey receiving an exemption.

Eric Garcia

Eric Garcia is a 46-year-old class C license holder in California. They have

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

a history of nocturnal seizures and have been seizure free since 2011. They take anti-seizure medication with the dosage and frequency remaining the same since February 2012. Their physician states that they are supportive of Eric Garcia receiving an exemption.

Marcel Gore

Marcel Gore is a 49-year-old class CB commercial driver's license (CDL) holder in Delaware. They have a history of epilepsy and have been seizure free since 2005. They take anti-seizure medication with the dosage and frequency remaining the same since 2013. Their physician states that they are supportive of Marcel Gore receiving an exemption.

Breanna Kersey-Evans

Breanna Kersey-Evans is a 29-year-old class B CDL holder in Indiana. They have a history of generalized seizure disorder and have been seizure free since October 20, 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Breanna Kersey-Evans receiving an exemption.

Hyun Kim

Hyun Kim is a 59-year-old class D license holder in New Jersey. They have a history of encephalitis epilepsy and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Hyun Kim receiving an exemption.

Dylan Kortan

Dylan Kortan is a 24-year-old class D license holder in Minnesota. They have a history of epilepsy and have been seizure free since 2008. They take anti-seizure medication with the dosage and frequency remaining the same since 2015. Their physician states that they are supportive of Dylan Kortan receiving an exemption.

Michael Malone

Michael Malone is a 39-year-old class D license holder in Connecticut. They have a history of seizure disorder and have been seizure free since September 23, 2015. They take anti-seizure medication with the dosage and frequency remaining the same since 2015. Their physician states that they are supportive of Michael Malone receiving an exemption.

Joe Delgado-Orozco

Joe Delgado-Orozco is a 46-year-old class C license holder in Illinois. They

have a history of epilepsy and have been seizure free for over 20 years. They take anti-seizure medication with the dosage and frequency remaining the same since 2005. Their physician states that they are supportive of Joe Delgado-Orozco receiving an exemption.

Vincent Perry

Vincent Perry is a 40-year-old enhanced license holder in Washington. They have a history of juvenile myoclonic epilepsy and have been seizure free since 2011. They take anti-seizure medication with the dosage and frequency remaining the same since 2011. Their physician states that they are supportive of Vincent Perry receiving an exemption.

Michael Pesino

Michael Pesino is a 54-year-old class B CDL holder in Connecticut. They have a history of complex partial epilepsy and have been seizure free since June 30, 2006. They take anti-seizure medication with the dosage and frequency remaining the same since May 2022. Their physician states that they are supportive of Michael Pesino receiving an exemption.

Michael Prichard

Michael Prichard is a 46-year-old class D license holder in Montana. They have a history of idiopathic seizure disorder and have been seizure free since 2014. They take anti-seizure medication with the dosage and frequency remaining the same since 2014. Their physician states that they are supportive of Michael Prichard receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-20932 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0013]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on August 28, 2024. The exemptions expire on August 28, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, fmcamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2024-0013) in the keyword box and click "Search." Next, sort the results by "Posted (Older-Newer)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to

www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On July 24, 2024, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 59961). The public comment period ended on August 23, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the

maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting

the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Gustavo Aro (NV)
Amber Bivens (OH)
Jerry Burleson (AL)
Trenton Eash (FL)
Kiser Holiday (CA)
Camry McCaleb (TX)
Jeffrey Moore (PA)
Henry Pauls (WI)
Jackson Smith (NH)
Robert Webber (NC)
Jason Wooten (GA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–20927 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0109; FMCSA–2013–044; FMCSA–2022–0044]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate

commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 31, 2024. The exemptions expire on August 31, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2013-0109, FMCSA-2013-044, or FMCSA-2022-0044) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse 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 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On August 7, 2024, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (89 FR 64532). The public comment period ended on September 6, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the seven renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of August 31, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (89 FR 64532):

Cody Baker (IN)
David P. Crowe (VA)
Michael Curtis Gibson (SC)
Raymond Lobo (NJ)
Alexis Roldan (IL)
William Smith (NC)
Yoon Song (CA)

The drivers were included in docket number FMCSA-2013-0109, FMCSA-

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

2013-044, or FMCSA-2022-0044. Their exemptions were applicable as of August 31, 2024 and will expire on August 31, 2026.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-20929 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0012]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable August 13, 2024. The exemptions expire August 13, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket

number (FMCSA–2024–0012) in the keyword box and click “Search.” Next, sort the results by “Posted (Older—Newer),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On July 9, 2024, FMCSA published a notice announcing receipt of applications from 10 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 54672). The public comment period ended on August 8, 2024, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received three comments in this proceeding. Two of the commenters stated that they support FMCSA in granting exemptions for individuals who are hard of hearing and deaf. However, one of these two commenters also stated that they do not believe drivers who hold the exemption should have to renew the hearing exemption after a monitoring period, if the driver abides by the standard rules, regulations, and wears their appropriate hearing aids. The third commenter disagrees with FMCSA’s decision to grant the exemptions indicating that it is safety risk to not be able to hear and operate a CMV.

In response to these comments, the Agency acknowledges the concerns regarding the requirement for an exemption holder to renew their exemption every two years. However, the Federal hearing exemption may be granted not only to individuals who are hard of hearing utilizing hearing aids but also individuals who are deaf and may not use hearing aids. Although under 49 U.S.C. 31136(e) and 31315(b), FMCSA is able to grant a medical exemption for no longer than a 5-year-period, they Agency grants medical exemptions for a 2-year period to be aligned with the maximum duration of a driver’s medical certification. In addition, FMCSA found that the drivers granted hearing exemptions have demonstrated that they do not pose a risk to public safety based on an individual assessment of each applicant’s prior experience operating motor vehicles on public roads. The Agency considered applicants prior driving experience as a factor in determining whether an equal or greater level of safety would likely be achieved by permitting them to drive in interstate commerce.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs

for a 2-year period to align with the maximum duration of a driver’s medical certification.

The Agency’s decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, “Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.” The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver’s license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant’s driving record found in the Commercial Driver’s License Information System, for commercial driver’s license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver’s Licensing Agency. Each applicant’s record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does

not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Carl Afroilan (MD)
Kevin Camper (IN)
Anthony Cline (OH)
Dwain Coppennoll (OR)
Adrian Crutchfield (MO)
Jonathan Hornberger (MI)
Scott Prewara (MN)
Gregory Rosa (NY)
Barney Toussaint (GA)
Terrell Williams (OH)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-20930 Filed 9-13-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0059]

Denial of Motor Vehicle Defect Petition, DP22-003

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a defect petition (DP22-003) jointly submitted by a consulting firm and four automotive associations requesting that the Agency initiate a safety defect

investigation into the loss of motive power incidents attributed to oil drain pan assembly failures on certain Hyundai Motor America, Inc. and Kia America, Inc. vehicles spanning Model Years (MY) 2005–2021. After conducting a technical review of the petition and other information, NHTSA's Office of Defects Investigation has concluded that the issues raised by the petition do not warrant a defect investigation at this time. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT:

Joseph Teitelman, Vehicle Defect Division C, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366-3243. Email: joseph.teitelman@dot.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency or it may include the collection of information from a motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect, and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Background Information

On September 12, 2022, the Office of Defects Investigation (ODI) opened a Defect Petition (DP22-003) to evaluate the petition, which was jointly submitted by a consulting firm¹ and four automotive associations²

¹ Johnson Policy Associates, Inc.

² Automotive Oil Change Association, Auto Care Association, Service Station Dealers Association & Allied Trades, and Automotive Service Association.

(collectively, the “Petitioners”) to NHTSA (the “Agency”) on July 13, 2022. The Petitioners requested that NHTSA initiate a safety defect investigation into the oil drain pan assemblies of multiple Hyundai and Kia vehicles. The following Hyundai and Kia vehicles were referenced in the petition, representing an estimated combined population of more than 7.5 million vehicles and 83 total model/model year vehicles: 2006–2019 Hyundai Sonata, 2013–2018 Hyundai Santa Fe Sport, 2010–2012 and 2019–2020 Hyundai Santa Fe, 2010–2015 and 2018–2019 Hyundai Tucson, 2011–2021 Kia Sportage, 2005–2020 Kia Optima, 2011–2020 Kia Sorento, 2010–2013 Kia Forte, 2010–2013 Kia Forte Coup, and 2007–2010 Kia Rondo. The Petitioners submitted four supplemental letters to the Agency on January 31, 2023, March 21, 2023, May 23, 2023, and August 4, 2023. NHTSA's technical review of the petition included a review of the material cited by the Petitioners, consumer complaint information in NHTSA's databases, and related dealer communications.

Summary of Petition

The Petitioners assert that the subject vehicles manufactured by Hyundai Motor America, Inc. (“Hyundai”) and Kia America, Inc. (collectively, “H/K”) are equipped with oil drain pan assemblies that “have experienced unprecedented allegations of mid-interval plug-outs thousands of miles after service without malfunction indicator lights or the leakage associated with under-tightening an oil drain plug, or a plug or pan with damaged threads.” Additionally, the Petitioners allege that the defective oil pan assemblies are causing engines to seize and experience a loss of motive power while being operated, often at highway speeds. The specific failure mode detailed in the petition is the engine oil drain plug “backing out” while the vehicle is being operated following an oil change. The “backing out” of the drain plug results in the sudden and rapid draining of engine oil, thereby leading to loss of motive power. The Petitioners assert that the oil drain plug gaskets are “paint-camouflaged” and “fused to either the plug or pan.” It is alleged that when the oil of the subject vehicles is being changed, there is an increased likelihood of failing to remove the existing drain plug gasket before applying a new one, an act commonly referred to as either *double-gasketing* or *stacking gaskets*. The Petitioners indicate that the absence of necessary technical information for changing oil in H/K vehicles' owner's manuals

contributes to the improper application of multiple drain plug gaskets.

Additionally, the Petitioners allege that the subject vehicles' oil pans have insufficient structural integrity. The Petitioners state that the "overall flimsy pan material" contributes to the loosening of the drain plugs and leads to cracks developing in the oil pans. The petition cites five examples of vehicles with oil pans that were identified as containing cracks and provides supporting photographs.

Furthermore, the Petitioners assert that H/K should have identified a safety-related defect in relation to the alleged issue and communicated such to NHTSA by submitting a Defect and Noncompliance Information Report, pursuant to applicable federal regulations. The Petitioners also suggest that the manufacturers should circulate information addressing the risks associated with their painted oil pan assemblies in a Technical Service Bulletin (TSB).

The July 13, 2022, petition references eight complaints, which were reported by consumers directly to NHTSA and "over 100" complaints sourced from professional aftermarket automotive maintenance experts and consumer forums. In the four supplemental letters to the Agency, additional complaints were referenced by the Petitioners, bringing the total number of complaints from all sources to 166. The supplemental letters also reference an expanded list of subject vehicles and brought the total to at least 144 model/model year vehicles, representing an estimated combined population of more than 11.5 million vehicles.

Office of Defects Investigation Analysis

ODI completed a detailed review of the eight Vehicle Owner Questionnaires (VOQs) which were referenced in the petition. ODI determined that five of the eight complaints were related to claims of drain plug back outs leading to loss of motive power and/or permanent engine damage. The remaining three complaints were not related to the issues raised by the Petitioners and instead included allegations about excessive oil consumption and unrelated engine failure. With respect to the complaints that were related to the issues raised by the Petitioners, a loss of motive power event was commonly related to a prior oil change service, conducted either at a dealership or a third-party service center.

ODI conducted a broad search of NHTSA's database for any additional VOQs involving all H/K models from MY 2005 through the present. The database search, which was aimed at

locating complaints referencing the oil drain plug or a crack in the oil pan, produced 46 additional VOQs that were related to the issues raised by the Petitioners and contained unique VINs. Of the 51 total related VOQs, there were no reported collisions or vehicle fires. The vehicle models that represented the largest percentage of the related VOQs were the Hyundai Sonata with 15 reported complaints, the Hyundai Santa Fe with eight reported complaints, the Kia Sorento with six reported complaints, and the Hyundai Tucson with five reported complaints. The failure rates for individual H/K models represented by the VOQs submitted to NHTSA are all less than 2 reported occurrences per 100,000 vehicles, which is relatively low for a population that includes vehicles that have been in service for more than 10 years.

Based on a review of the available data, the subject failure mode has not occurred between the initial sale of a vehicle and the completion of its first oil change. There is insufficient information to support that a vehicle-based defect exists relating to the oil pan assembly, and instead the documented incidents appear related to a failure to follow the proper procedure during an oil change service. It is noteworthy that the reported failure mileage varies greatly within both the population of VOQs submitted to NHTSA and the additional reports referenced by the Petitioners, making it apparent that simply changing the oil for the first time does not result in the backing out of the oil drain plug. It is not unusual or unprecedented for a vehicle to require the removal of an oil drain plug gasket during an oil change service, and properly trained technicians should be aware of the need to do so before adding a new gasket and re-installing the oil drain plug.

A review of the photographs of alleged oil pan cracks revealed that all examples of the alleged issue were localized to the immediate vicinity of the oil drain plug. Additionally, multiple photographs depicted witness marks on the surface of the oil pan, indicating that direct contact likely occurred between the component and a tool during servicing. The available information demonstrates that the documented oil pan damages were likely the result of improper maintenance procedures rather than defective components.

In further consideration of the issue raised by the Petitioners, ODI conducted a review of previous Agency investigations and actions that shared technical similarities. In 2004, ODI opened a Preliminary Evaluation (later

upgraded to an Engineering Analysis) focusing on MY 2003–2005 Honda CR–V vehicles that were experiencing engine compartment fires. The failures, which were reported to ODI at a rate of more than 30 per 100,000 vehicles, related to an oil leak resulting from the stacking of oil filter gaskets during an oil change service.³ Through its investigations, ODI determined that technician error was one of the main contributing factors to the high rate of vehicle fires and concluded that if the initial oil change was done properly on the subject vehicles with the original oil filter gasket being removed and a new one being correctly installed, the elevated risk of fire was eliminated. The Engineering Analysis was closed in January 2005 without a field action based on ODI's findings. Conversely, in 2013, an equipment recall was issued on oil filters manufactured by FRAM Group Operations, LLC. It was determined that the oil filters, which were sold for installation on several Subaru models, were manufactured with improper threading of the base plate, leading to an inadequate seal and the potential for rapid oil leakage.⁴ These examples demonstrate that the Agency has not proceeded with recall action on issues that appear to stem from improper repair procedures, but has acted to remedy defective components that lead to the loss of engine oil.

In October 2023, Hyundai published a TSB with the subject: "Engine Oil and Filter Change Service Guidelines."⁵ The TSB, which is applicable to all Hyundai models equipped with gasoline engines, provides numbered instructions with accompanying photographs and specifically highlights the need to remove and replace existing drain plug gaskets prior to reinstalling the drain plug. This TSB reinforces proper maintenance procedures for oil change service on Hyundai vehicles.

After a thorough review of the material submitted by the Petitioners and other pertinent information available to the Agency, NHTSA has not identified sufficient evidence of a vehicle-based defect pertaining to the oil pan assemblies of the subject vehicles. Based on the available information, it is unlikely that any investigation opened from the granting of this petition would result in an order concerning the notification and remedy of a safety-related defect. Consequently, this petition is denied. The denial of

³ PE04–018 (2004) Office of Defects Investigations, NHTSA; EA04–027 (2004) Office of Defects Investigations, NHTSA.

⁴ NHTSA Safety Recall Number 13E–005.

⁵ Hyundai TSB 23–EM–005H. (2023) Engine Oil and Filter Change Service Guidelines.

this petition does not foreclose the Agency from taking further action if warranted or making a future finding that a safety-related defect exists based upon additional information that the Agency may receive.

Authority: 49 U.S.C. 30162(d) and 49 CFR part 552; delegation of authority at 49 CFR 1.95(a).⁶

Eileen Sullivan,

Associate Administrator, Enforcement.

[FR Doc. 2024–20971 Filed 9–13–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

⁶ The authority to determine whether to approve or deny defect petitions under 49 U.S.C. 30162(d) and 49 CFR part 552 has been further delegated to the Associate Administrator for Enforcement.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. OFAC is also revising the entries of a person and a vessel that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List. All property and interests in property subject to U.S. jurisdiction of these persons and these vessels 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: Lisa M. Palluconi, Acting 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 Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons 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 September 10, 2010, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and vessels are blocked under the relevant sanctions authorities listed below.

Individuals

1. BAHRAMI, Ebrahim, Iran; DOB 04 Feb 1973; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0320106799 (Iran) (individual) [NPWMD] [IFSR] (Linked To: SHAHID KHARRAZI INDUSTRIES).

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," 70 FR 38567, 3 CFR, 2005 Comp., p. 170 (E.O. 13382), for acting or purporting to act for or on behalf of, directly or indirectly, SHAHID KHARRAZI INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. EINI SARKALLEH, Gholamreza (Arabic: غلامرضا عینی سرکله) (a.k.a. EYNI SARKALLEH, Gholamreza; a.k.a. EYNI, Gholamreza), Tehran, Iran; DOB 11 Jul 1975; POB Amlash, Gilan, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 6309425307 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: AZADEGAN TRANSPORTATION COMPANY).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2019 Comp., p. 356., 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 acted or purported to act for or on behalf of, directly or indirectly, AZADEGAN TRANSPORTATION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. JA'FARABADI, Ali, Iran; DOB 20 Sep 1975; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 5718870888 (Iran) (individual) [NPWMD] [IFSR] [IRGC] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS AIR FORCE).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, ISLAMIC REVOLUTIONARY GUARD CORPS AIR FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. KATEBI, Ruhollah, Moscow, Russia; DOB 11 Sep 1978; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 4609412802 (Iran) (individual) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS).

Designated pursuant to section 1(a)(iv) of E.O. 13382 for acting or purporting to act for or on behalf of, directly or indirectly, MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. NOORAHMADI, Masoud (Arabic: مسعود نوراحمدی) (a.k.a. NUR AHMADI, Masud), Tehran, Iran; DOB 07 Jun 1965; POB Andimeshk, Khuzestan, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 1930608071 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: AZADEGAN TRANSPORTATION COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AZADEGAN TRANSPORTATION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. POURFARZANEH, Hassan (a.k.a. FARZANEH, Hassanpour; a.k.a. PURFARZANEH, Hasan; a.k.a. PURFARZANEH, Hassan), Iran; DOB 02 Dec 1984; nationality Iran; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 0076135462 (Iran) (individual) [RUSSIA-EO14024] (Linked To: FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) as amended by Executive Order 14114 of December 22, 2023, "Taking Additional Steps With Respect to the Russian Federation's Harmful Activities," 88 FR 89271, 3 CFR, 2023 Comp. p. 721 (Dec. 22, 2023) (E.O. 14114), for being a leader, official, senior executive officer, or member of the board of directors of FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. POURFARZANEH, Hossein (a.k.a. POUR FARZANEH, Hossein; a.k.a. PURFARZANEH, Hossein), Iran; DOB 12 Feb 1973; nationality Iran; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport M33177864 (Iran) expires 09 Feb 2020 (individual) [RUSSIA-EO14024] (Linked To: FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being a leader, official, senior executive officer, or member of the board of directors of FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. POURFARZANEH, Zahra (Arabic: زهرا پورفرزانه) (a.k.a. PUR FARZANEH, Zahra; a.k.a. PURFARZANEH, Zahra), Iran; DOB 01 Jan 1997 to 31 Dec 1998; nationality Iran; Gender Female; Secondary sanctions risk: See Section 11 of Executive Order 14024.;

National ID No. 00311698638 (Iran) (individual) [RUSSIA-EO14024] (Linked To: FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being a leader, official, senior executive officer, or member of the board of directors of FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU, a person whose property and interests in property are blocked pursuant to E.O. 14024.

9. ZARE, Ali (Arabic: علی زارع), Tehran, Iran; DOB 23 Mar 1980; POB Asadabad, Hamedan, Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 4011413593 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: AZADEGAN TRANSPORTATION COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, AZADEGAN TRANSPORTATION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AMAD BEHINEH SAZ ENGINEERING COMPANY (Arabic: شرکت مهندسی آماد بهینه ساز (a.k.a. AMAD OPTIMIZER ENGINEERING COMPANY), Shaid Riahi Building, Ground Floor, Plaque 0, Riahi St., 6th Alley, Tehran Bimeh, Tehran 1391947999, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Jan 2002; National ID No. 10102251738 (Iran); Business Registration Number 183003 (Iran) [SDGT] [IRGC] [IFSR] (Linked To: AZADEGAN TRANSPORTATION COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, AZADEGAN TRANSPORTATION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AZADEGAN TRANSPORTATION COMPANY (Arabic: شرکت حمل و نقل آزادگان), Kilometer 9 Jadeh Makhsos, Esteghlal Town, Obeydi Blvd, Jalal Amadegah St, Shahid Hasheminejad, Tehran, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 Dec 1990; National ID No. 10101259330 (Iran); Registration Number 81273 (Iran) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. FARZANEGAN PROPULSION SYSTEMS DESIGN BUREAU (Arabic: شرکت دفتر طراحی سامانه های قوای محرکه فرز انگان), Gilan Science & Technology Park, Nezampezeshki Alley, Entezam Square, Rasht, Gilan, Iran; Website <https://farzaneganpb.com>; Secondary sanctions risk: See Section 11 of Executive Order

14024.; National ID No. 14006445101 (Iran); Registration Number 181 (Iran) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

4. IRAN AIR (a.k.a. HAVAPEYMAI MELLI IRAN; a.k.a. IRAN AIR PJSC; a.k.a. IRANAIR; a.k.a. IRANAIR CARGO; a.k.a. THE AIRLINE OF THE ISLAMIC REPUBLIC OF IRAN; a.k.a. "HOMA"), Iran Air Building, Mehrabad Airport, Tehran, Iran; Postal Box 13185-775, Tehran, Iran; Central Airlines Department of the Islamic Republic of Iran, Tehran Karaj Special Road, Beginning of Mehrabad International Airport, Tehran, Iran; Website www.iranair.com; alt. Website www.iranair.co.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 10100354259 (Iran); Registration Number 8132 (Iran) [IRAN] [IRAN-CON-ARMS-EO] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the transportation sector of the Russian Federation economy.

5. SANJESH GOSTAR DANA ENGINEERING AND QUALITY CONTROL INSPECTION COMPANY (Arabic: شرکت بازرسی مهندسی و کنترل کیفیت سنجش گستر دانا) (a.k.a. GOSTAR DANA ENGINEERING INSPECTION AND MEASUREMENT QUALITY CONTROL COMPANY), Ghadir Building, 5th Floor, Plaque 4, Riahi St., 6th Alley, Tehran Bimeh, Tehran 1391948116, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Dec 2002; National ID No. 10102384287 (Iran); Business Registration Number 196566 (Iran) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).
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, ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.
6. TALIEH SABZ JEHAN GROUP COMPANY (Arabic: شرکت گروه طلایه سبز جهان) (a.k.a. TALIEH SABZ JAHAN COMPANY), Ghadir Building, 6th Floor, Plaque 4, Riahi St., 6th Alley, Bimeh, Tehran, Tehran 1391948117, Iran; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Aug 2007; National ID No. 10102853650 (Iran); Business Registration Number 244700 (Iran) [SDGT] [IRGC] [IFSR] (Linked To: AZADEGAN TRANSPORTATION COMPANY).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, AZADEGAN TRANSPORTATION COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessels

1. BORIS KUSTODIEV (UFXZ) General Cargo Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9103817; MMSI 273191000 (vessel) [RUSSIA–EO14024] (Linked To: MG–FLOT LIMITED LIABILITY COMPANY).

Identified as property in which MG–FLOT LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. KOMPOZITOR RAKHMANINOV (UCXW) Roll-on Roll-off Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 8606616; MMSI 273452650 (vessel) [RUSSIA–EO14024] (Linked To: MG–FLOT LIMITED LIABILITY COMPANY).

Identified as property in which MG–FLOT LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. PORT OLYA–3 (UHEQ) General Cargo Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9481910; MMSI 273371920 (vessel) [RUSSIA–EO14024] (Linked To: MG–FLOT LIMITED LIABILITY COMPANY).

Identified as property in which MG–FLOT LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. PORT OLYA–4 (UDHW) General Cargo Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 9481934; MMSI 273390550 (vessel) [RUSSIA–EO14024] (Linked To: MG–FLOT LIMITED LIABILITY COMPANY).

Identified as property in which MG–FLOT LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

On September 10, 2024, OFAC published the following revised information for the entry on the SDN List for the following person and property blocked under the relevant sanctions authority listed below.

Entity

1. MG–FLOT LIMITED LIABILITY COMPANY (a.k.a. MG–FLOT LLC (Cyrillic: ООО МГ-ФЛОТ); a.k.a. MG–FLOT OOO; a.k.a. TRANSMORFLOT LLC; a.k.a. TRANSMORFLOT SHIPPING COMPANY; a.k.a. TRANSMORPORT OOO), House 18 D Premise 1, Lenina Street, Akhtynskiy District, Republic of Dagestan 368730, Russia; ul. Chkalova, D. 27, Olya, Astrakhan Oblast 416425, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 17 Feb 2005; Tax ID No. 3017041900 (Russia); Identification Number IMO 6330601; alt. Identification Number IMO 6016988; Government Gazette Number 75191644 (Russia); Business Registration Number 1053001124483 (Russia) [RUSSIA–EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the marine sector of the Russian Federation economy.

Vessel

1. SAPPFIR (a.k.a. ETIM EMIN) (UBIG5) General Cargo 1,853GRT Russia flag; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Vessel Registration Identification IMO 8700010; MMSI 273355400 (vessel) [RUSSIA–EO14024] (Linked To: MG–FLOT LIMITED LIABILITY COMPANY).

Identified as property in which MG–FLOT LIMITED LIABILITY COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

Dated: September 10, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–20934 Filed 9–13–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels 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 vessels 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: Lisa Palluconi, Acting 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 Sanctions Compliance & Evaluation, 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 September 11, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. AL-SAYYID, Muhammad Ibrahim Habib (Arabic: محمد حبيب إبراهيم السيد) (a.k.a. AL-SAYYID, Muhammad Habib; a.k.a. AL-SAYYID, Muhammad Habib Ibrahim), Nabi Eyal, Zahle, Lebanon; Klaimnus, Beirut, Lebanon; DOB 22 Feb 1970; POB Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. OBEID, Boutros Georges (a.k.a. ABIR, Boutros Georges; a.k.a. OBAID, Boutros George; a.k.a. OBEID, Botros Georges; a.k.a. OBEID, Boutros; a.k.a. OBEID, Pierre Boutros George), Mar Roukoz, Dekwaneh, 00961, Lebanon; DOB 14 Dec 1959; POB Cheyah, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR0084771 (Lebanon) issued 15 Sep 2016 expires 15 Sep 2021 (individual) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. ZGHEIB, Ali Nayef (Arabic: علي نايف زغيب) (a.k.a. ZGHEIB, Ali Naif; a.k.a. ZOGHEIB, Ali Nayef; a.k.a. ZUGHAIB, Ali), Raouche, Beirut, Lebanon; Ras El Matn, Lebanon; DOB 01 Jan 1945; POB Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 000024647222 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entities

1. EUROPEAN LEBANESE INTERNATIONAL TRADE S.A.R.L. ELIT (a.k.a. ELIT LIMA; a.k.a. ELIT LIMASSOL (LIMA) CO.; a.k.a. ELIT LIMASSOL-CYPRUS; a.k.a. EUROPEAN LEBANESE INTERNATIONAL COMPANY FOR TRADE LLC (Arabic: الشركة الأوروبية اللبنانية العالمية للتجارة ش.م.م.); a.k.a. EUROPEAN LEBANESE INTERNATIONAL TRADE CO.; a.k.a. EUROPEAN LEBANESE INTERNATIONAL TRADE S.A.R.L. CO.), Queens Plaza Center, Section 401, Property 132, Sad Al-Bouchrieh, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Jul 2012; Commercial Registry Number 2030736 (Lebanon); License 2030736 (Lebanon) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. HEAVY INDUSTRIAL FUELS SAL HIF (a.k.a. HEAVY INDUSTRIAL FUELS; a.k.a. HEAVY INDUSTRIAL FUELS S.A.L. (HIF); a.k.a. "HIF S.A.L."; a.k.a. "HIF SAL" (Arabic: "هيف ش.م.ل.")), Baouchriyeh Street, Sad El Baouchriyeh, Mount Lebanon, Lebanon; Ghazieh Zahrani, Lebanon; P.O. Box: 90326, Jdeidet, El Metn, Lebanon; Grey Center, 2nd Floor, Block A, Sin El Fil, Lebanon; Baabda, Lebanon; Website www.hiflb.com; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Feb 2008; Organization Type: Wholesale of solid, liquid and gaseous fuels and related products; Commercial Registry Number 2012021 (Lebanon) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. HEAVY OIL DISTRIBUTION COMPANY HODICO S.A.L. (a.k.a. HEAVY OIL DISTRIBUTION CO SAL; a.k.a. HEAVY OIL DISTRIBUTION CO. HODICO SARL; a.k.a. HEAVY OIL DISTRIBUTION COMPANY SAL; a.k.a. HEAVY OIL DISTRIBUTION COMPANY-HODECO (Arabic: هيفي أويل ديستريشين كومباني - هوديكو); a.k.a. HODICO; a.k.a. HODICO SAL), Baabda, Lebanon; Queen's Plaza Center, Block C, Jdeideh Boulevard Street, Sin El-Fil, Baouchriyeh, Lebanon; PO Box 90326, Metn, Lebanon; Grey Center, 2nd Floor, P.O. Box: 90326, Jdeidet, El Metn, Lebanon; Website www.hodico.com/; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Apr 2001; Commercial

Registry Number 68648 (Lebanon) [SDGT] (Linked To: HIZBALLAH).

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 service to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. HEAVY OIL DISTRIBUTION COMPANY HODICO SAL OFFSHORE (a.k.a. HEAVY OIL DISTRIBUTION CO. HODICO SAL OFF-SHORE; a.k.a. HEAVY OIL DISTRIBUTION COMPANY HODECO S.A.L. OFF SHORE (Arabic: هيفي أويل دستريبيشين - هوديكو ش.م.ل. أوف شور); a.k.a. HODICO OFF SHORE), Beirut, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Feb 2007; Organization Type: Wholesale of solid, liquid and gaseous fuels and related products; Commercial Registry Number 1801752 (Lebanon) [SDGT] (Linked To: OBEID, Boutros Georges; Linked To: ZGHEIB, Ali Nayef).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, BOUTROS OBEID and ALI NAYEF ZGHEIB, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. O.H.G. HOLDING SAL (a.k.a. OHG HOLDING S.A.L.; a.k.a. OHG HOLDING SAL), Beirut, Lebanon; P.O. Box 90326, Grey Center 2nd Floor, Jdeideh Boulevard, Sin El-Fil, Baouchriyeh, Metn, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Jul 2009; Organization Type: Activities of holding companies; Commercial Registry Number 1901517 (Lebanon) [SDGT] (Linked To: OBEID, Boutros Georges).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, BOUTROS OBEID, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

On September 11, 2024, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. ALPHA GAS (a.k.a. CAPTOON 2; a.k.a. GITTA GAS; a.k.a. JUNO GAS; a.k.a. YOOSHI DOODA) (51M771) Tanzania flag; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Other Vessel Flag Panama; alt. Other Vessel Flag Isle of Man; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 8817693; MMSI

677067100 (vessel) [SDGT] (Linked To: HIZBALLAH).

Identified as property in which HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, has an interest.

2. MARINA (a.k.a. GEMGAZ) (51M643) Tanzania flag; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Other Vessel Flag Togo; alt. Other Vessel Flag Mongolia; alt. Other Vessel Flag Germany; alt. Other Vessel Flag Antigua and Barbuda; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9005493; MMSI 677054300 (vessel) [SDGT] (Linked To: HIZBALLAH).

Identified as property in which HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, has an interest.

Lisa M. Palluconi,

*Acting Director, Office of Foreign Assets
Control, U.S. Department of the Treasury.*

[FR Doc. 2024-20992 Filed 9-13-24; 8:45 am]

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Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase 2 Construction of the Vineyard Wind 1 Offshore Wind Project off Massachusetts; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD935]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase 2 Construction of the Vineyard Wind 1 Offshore Wind Project off Massachusetts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Vineyard Wind 1 LLC (Vineyard Wind 1) to incidentally harass marine mammals during the completion of construction activities associated with the Vineyard Wind 1 Offshore Wind Project in the northern portion of Lease Area OCS–A 0501 offshore of Massachusetts.

DATES: This authorization is effective from October 1, 2024 through September 30, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either an authorized is proposed or, if the taking is limited to

harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 15, 2023, NMFS received a request from Vineyard Wind 1 for an IHA to take marine mammals incidental to Phase 2 construction of the Vineyard Wind 1 Offshore Wind Project off Massachusetts, specifically wind turbine generator (WTG) monopile foundation installation, in the northern portion of Lease Area OCS–A 0501. Vineyard Wind 1 completed installation of 47 WTG monopiles and one electrical service platform (ESP) jacket foundation in 2023 under an IHA issued by NMFS on June 25, 2021 (86 FR 33810) with effective dates from May 1, 2023 through April 30, 2024. Due to unexpected delays, Vineyard Wind 1 was not able to complete pile driving activities before the expiration date of the current IHA (April 30, 2024); thus, Vineyard Wind 1 requested take of marine mammals incidental to installing the remaining 15 monopiles to complete foundation installation for the Project. In total, the Project will consist of 62 WTG monopiles and 1 offshore substation.

Following NMFS’ review of the December 2023 application, Vineyard Wind 1 submitted multiple revised versions of the application, and it was deemed adequate and complete on March 13, 2024. The Vineyard Wind 1 request was for take of 14 species of marine mammals, by Level B harassment and, for 6 of these species, Level A harassment. Neither Vineyard Wind 1 nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Vineyard Wind 1 previously conducted high resolution geophysical (HRG) site characterization surveys within the Lease Area and associated export cable corridor in 2016, 2018–2021, and during the 2023 construction season from June–December (ESS Group Inc., 2016; Vineyard Wind, 2018, 2019; EPI Group, 2021; RPS, 2022; Vineyard Wind, 2023a–f). During the 2023 construction season, NMFS coordinated closely with Vineyard Wind 1 to ensure compliance with their IHA. In a few instances, NMFS raised concerns with Vineyard Wind 1 regarding their implementation of certain required measures. NMFS worked closely with Vineyard Wind 1 throughout the construction season to course correct, where needed, and ensure compliance with the requirements (e.g., mitigation, monitoring, and reporting) of the previous IHA. Information regarding their monitoring results may be found in the Estimated Take of Marine Mammals section.

Description of the Specified Activity**Overview**

Vineyard Wind 1 plans to construct and operate an 800-megawatt (MW) wind energy facility, the Project, in the Atlantic Ocean in Lease area OCS–A 0501, offshore of Massachusetts. Altogether, the project will consist of up to 62 offshore WTGs, 1 ESP, an onshore substation, offshore and onshore cabling, and onshore operations and maintenance facilities. The onshore substation and ESP are now complete. Installation of 47 monopile foundations was completed under the previous IHA (86 FR 33810, June 25, 2021), effective from May 1, 2023 through April 30, 2024. However, due to unexpected delays, Vineyard Wind 1 was not able to complete pile driving activities before the expiration date of the IHA (April 30, 2024). Take of marine mammals, in the form of behavioral harassment and limited instances of auditory injury, may occur incidental to the installation of the remaining 15 WTG monopile foundations due to in-water noise exposure resulting from impact pile driving. The remaining 15 monopile foundations will be installed within a Limited Installation Area (LIA) (64.3 square kilometers (km²; 15,888.9 acres)) within the Lease Area (264.4 km² (65,322.4 acres)). Installation of the remaining 15 monopile foundations is expected to occur in 2024, but could also occur in 2025.

Specific Geographic Region

The 15 remaining piles will be installed within a Limited Installation

Area (LIA) occupying a portion of the Wind Development Area (WDA) within the Bureau of Ocean Energy Management (BOEM) lease area located in Federal waters off Massachusetts (figure 1). At its nearest point, the LIA is approximately 29 kilometers (km; 18.1 miles (mi)) from the southeast corner of Martha's Vineyard and a similar distance from Nantucket. Water

depths in the WDA range from approximately 37–49.5 meters (m; 121–162 feet (ft)). Water depth and bottom habitat are similar throughout the Lease Area (Pyc *et al.*, 2018). Figure 1 shows the LIA and planned locations for the remaining 15 monopiles to be installed.

A detailed description of the specific geographic region and planned construction activities is provided in the

Federal Register notice for the proposed IHA (89 FR 31008, April 23, 2024).

Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that

Federal Register notice for the description of the specific activities.

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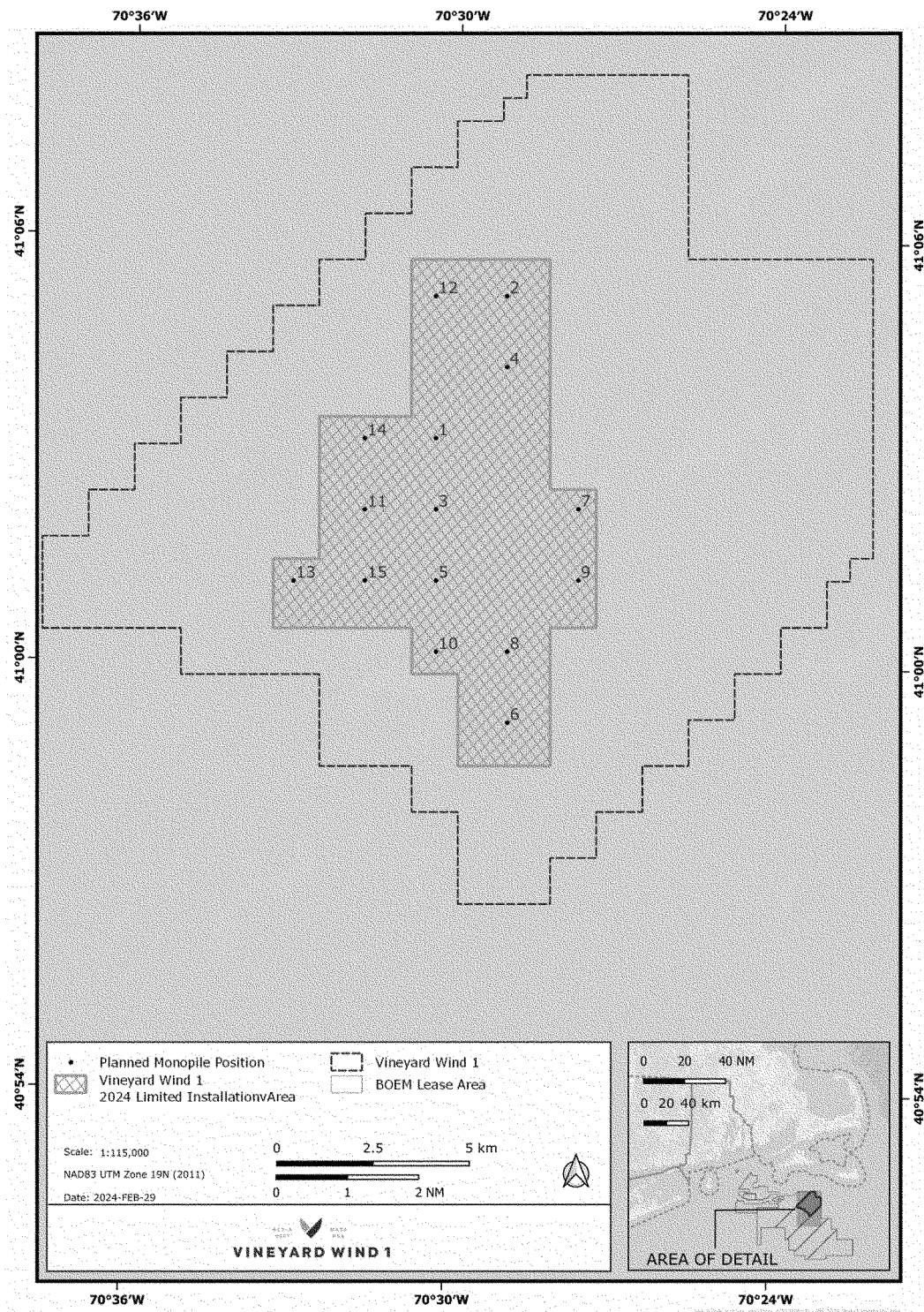


Figure 1 – Vineyard Wind 1 Limited Installation Area

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Comments and Responses

A notice of NMFS' proposal to issue an IHA to Vineyard Wind 1 was

published in the **Federal Register** on April 23, 2024 (89 FR 31008). That notice described, in detail, Vineyard Wind's activities, the marine mammal species that may be affected by the

activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization,

and any other aspect of the notice of the proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS received 87 total comment letters, including letters from various non-governmental organizations (Seafreeze, Ltd., Rand Acoustics, LLC., Long Island Commercial Fishing Association (LICFA), Save Right Whales Coalition (SRWC), Rand Acoustics, Inc., ACK Residents Against Turbines) and members of the general public. We note that approximately 11 comment letters followed one of 2 different generic template formats, in which respondents provided comments that were identical or substantively the same. NMFS has reviewed all public comments received on the proposed issuance of the Vineyard Wind 1 Phase 2 IHA. All relevant substantive comments and NMFS' responses are provided below. Comments that are out of scope to NMFS' action of issuing the requested IHA (e.g., comments regarding how unusual mortality events (UMEs) are determined to be closed or requests for necropsy reports; declarations on the adequacy of the previously issued IHA to Vineyard Wind) and comments indicating general support for or opposition to offshore wind construction are not relevant to the proposed action and therefore were not considered or addressed here. We also provide no response to species or statutes not relevant to our proposed action under section 101(a)(5)(D) of the MMPA. The public comments and recommendations are available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-llc-construction-vineyard-wind-offshore-wind>. Please see the comment submissions for full details regarding the recommendations and supporting rationale.

Modeling and Take Estimates

Comment 1: A commenter suggested that NMFS and Vineyard Wind 1 should not operate under the assumption that Level B takes do not result in injury or death. The commenter suggests that the IHA analysis is deficient as behavioral disturbance resulting from the proposed activities could result in auditory masking, disruption to navigational ability and spatial orientation, splitting of mother calf pairs, and increased stress and cortisol responses could lead to secondary deaths due to entanglements, vessel strikes, and strandings. Another commenter suggested that NMFS was authorizing take in the form of mortality and,

further, stated that North Atlantic right whales are on the brink of extinction and a single additional death from construction activities could be catastrophic.

Response: NMFS disagrees with commenters that the planned pile driving activities would cause mortality or serious injury of marine mammals, and this final IHA does not authorize mortality or serious injury. The best scientific evidence available indicates that the anticipated impacts from the specified activities potentially include avoidance, cessation of foraging or communication, temporary threshold shift (TTS) and permanent threshold shift (PTS), stress, masking, etc. (as described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section in the proposed IHA **Federal Register** notice (89 FR 31008, April 23, 2024). Further, as described in the NID section, there is no evidence to suggest that these authorized impacts (characterized as harassment), at the magnitude and severity anticipated to result from these activities, would lead to impacts on reproduction or survival of any individual North Atlantic right whale (NARW) or other marine mammals, much less mortality.

In addition, NMFS emphasizes that there is no evidence that noise resulting from offshore wind development-related specified activities would cause increased risk of marine vessel strikes, entanglements, or mammal strandings. NMFS acknowledges that whales may temporarily avoid the area where the specified activities occur. However, NMFS does not anticipate, based on the best available science, that whales will abandon their habitat or be displaced in a manner that would result in a higher risk of vessel strike or entanglement, as suggested by a commenter, and the commenter does not provide evidence that either of these effects should be a reasonably anticipated outcome of the specified activity. The primary activity that is anticipated to result in temporary avoidance of the otherwise used habitat is foundation installation pile driving. Not only would this activity be limited to times of year when North Atlantic right whale presence is lower, pile driving would be intermittent, and only occur for a limited time over the course of 1 year. Together, these factors further reduce the likelihood that this species would be in close enough proximity to the activity to engage in avoidance behavior to the degree it would move into an area of risk (which would be closer to shore) that it could be struck by another vessel or experience entanglement.

Comment 2: Multiple commenters have expressed general concern for impacts to marine mammals, specifically to North Atlantic right whales, indicating that there are too many takes proposed for authorization and the IHA should be put on hold until more is known about impacts of offshore wind construction activities to North Atlantic right whales. A commenter suggests that estimated take by Level A harassment for North Atlantic right whales should be analyzed as modeled exposure estimates were greater than zero. Another commenter indicates that every attempt must be made to protect North Atlantic right whale calves from the risk of TTS and that pile driving should shut down for the remainder of a day if a mother and calf were to enter a clearance or shutdown zone.

Response: NMFS appreciates the commenters' general concern for marine mammals and specifically for North Atlantic right whales and, in general, acknowledges the need for additional data regarding the impacts of offshore wind construction activities on North Atlantic right whales; but disagrees that Level A harassment of NARW will result from the activity or that the IHA should be put on hold until more is known. NMFS is required to consider the best available science when assessing potential impacts and cannot delay authorization of an IHA until additional data is available. While there was a very small amount of Level A harassment modeled, the model is conservative for both Level A harassment and Level B harassment, as it does not take into account that Vineyard Wind 1 will be required to monitor and delay or shut down pile driving activities if a North Atlantic right whale is visually sighted at any distance by the pile driving protected species observers (PSOs) or acoustically detected within the 10 km passive acoustic monitoring (PAM) clearance and shutdown zone. As described in the proposed IHA, from November 1 through December 31 (when Vineyard Wind 1 would be installing piles), if a North Atlantic right whale (not just a mother/calf pair) is detected either via real-time PAM or vessel-based surveys at any distance from the pile driving location, pile driving must be delayed until the "follow-up vessel-based survey" described in their Pile Driving Monitoring Plan has been completed. Moreover, if three or more North Atlantic right whales are observed, pile driving will be delayed until the following day. These conservative measures were included in the proposed

IHA in recognition that North Atlantic right whales are more likely to be foraging in the area during November and December and that aggregations of North Atlantic right whales are more likely to remain in an area. The commenters' suggestion to delay pile driving until the next day if a mother and calf pair is observed is not warranted in November and December given the other extensive mitigation measures in place and the fact that data do not suggest mother and calf pairs remain in the area (Quintana-Rizzo *et al.*, 2021). Delaying pile driving would extend the project later into December which could result in more impacts as whale density increases throughout the winter (*i.e.*, the later in December, the more whales are likely to be present). Moreover, delaying the project is not practicable as Vineyard Wind is installing the 15 remaining piles in 2024 but must cease pile driving after December 31. Given these mitigation measures and the extensive related monitoring efforts designed to detect North Atlantic right whales for mitigation, NMFS does not anticipate and has not authorized any take by Level A harassment for North Atlantic right whales. The required measures reduce the risk of TTS for any North Atlantic right whale. Accordingly, as described in the **Federal Register** notice for the proposed IHA (89 FR 31008, April 23, 2024), the final IHA assumes that the mitigation efforts will be effective at reducing the potential for Level A harassment calculated in the density-based models as, specifically, the small number of instances in which a North Atlantic right whale was modeled to approach pile driving at a distance associated with exposure above the Level A harassment threshold, would not be expected to occur given the anticipated effectiveness of clearance and shutdowns in preventing exposure at notably greater distances and lower levels. We also note that while the scientific literature documents marine mammals are likely to avoid loud noises such as pile driving (*e.g.*, Brandt *et al.*, 2016; Nowacek *et al.*, 2004), avoidance was not quantitatively considered in the take estimates (although NMFS reasonably predicts this natural behavior will further reduce the potential for Level A harassment). NMFS recognizes that the key to effective mitigation is effective monitoring and the ability to detect marine mammals so that mitigation measures, such as delay to commencement of pile driving and shutdown should pile driving be occurring, may be implemented.

Vineyard Wind 1 is required to undertake extensive monitoring to maximize the ability to detect marine mammals with at least 9 PSOs monitoring for marine mammals before, during, and after pile driving. The reduction to the Level A harassment density-based take estimate appropriately reflects and acknowledges the monitoring and mitigation efforts, including the placement of three PSOs on the pile driving platform and dedicated PSOs vessel(s) and PAM.

Comment 3: A commenter indicates that estimated take by Level B harassment for common dolphins should not be adjusted per the AMAPPS average group size (30 dolphins), but rather per the PSO data collected by Vineyard Wind 1 during HRG surveys (10 dolphins) as this PSO data is more appropriate. The commenter further notes that there is no information indicating that Vineyard Wind 1 had difficulty staying within the take limits for common dolphins for the 2023 IHA.

Response: NMFS disagrees that an average group size estimate of 10 for common dolphins, based upon local PSO data, is more appropriate for adjusting the estimated take by Level B harassment for common dolphins than the AMAPPS group size of 30. The commenter references PSO data collected by Vineyard Wind 1 during HRG surveys, yet does not provide detail on the PSO report(s) upon which this data is based upon. The most recent Vineyard Wind 1 PSO report describes sighting 29 groups and a total of 717 common dolphins during the 2023 construction period, with an average group size of 24.7 dolphins (RPS, 2024). This estimate closely aligns with the average group size of 30 common dolphins from the AMAPPS dataset (Palka *et al.*, 2017; 2021), which NMFS has determined to be the best available data and most robust dataset for adjusting take estimates due to the standardized consistent effort and large dataset sample size. The large sample size contained in the AMAPPS dataset accounts for any variability in group size that may occur between observed common dolphin groups. Therefore, NMFS has determined that the AMAPPS average group size of 30 is most appropriate for adjusting take by Level B harassment for common dolphins in this analysis.

Comment 4: Multiple commenters suggest that NMFS should consider exposure to noise from vessel propulsion, thrusters, and jet trenching with scour protection as constituting behavioral harassment or that NMFS should undertake an analysis identifying the potential for take by

Level B harassment from operating offshore wind construction vessels, including the use of dynamic positioning (DP) thrusters, and jet trenching, and scour protection.

Response: NMFS analyzed the potential for various sources of noise to result in take of marine mammals and concludes that take from vessel propulsion, DP thrusters and jet trenching during Vineyard Wind 1's activities is not likely. Further, as noted below in Comment 5, mitigation requirements to further lessen any potential for impacts are included. On July 29, 2024, Vineyard Wind 1 confirmed to NMFS that scour protection activities are complete for the project and therefore this activity is not discussed further.

On a typical foundation, WTG, and inter-array cable installation day, Project vessels within and around the Lease Area may include a heavy lift pile installation vessel (the Orion), two Big Bubble Curtain (BBC) support vessels, two safety vessels, two crew transfer vessels, two accommodation vessels, one jack-up vessel installing monopile foundations, one pipe-burying vessel installing array cables, and one service operating vessel supporting foundation installation. During pile driving operations with favorable weather conditions, the Orion thrusters typically operate at approximately 25 percent capacity with a maximum capacity (1100 kW/4,500 kW). Thrusters may operate at higher capacity during higher wind speeds, waves, and currents.

In general, the Orion would be positioned at each pile driving location until after the pile is installed, after which time it would slowly transit at 10 kn (11.5 mph) or less (per the Construction and Operations Plan (COP) condition that vessels within the wind development area must travel at 10 kn (11.5 mph) or less at all times) to the next site. Because operating thrusters is inefficient with respect to cost due to fuel usage, the thrusters are typically engaged only when necessary to maintain position at the pile site or for safety reasons (*e.g.*, during rough weather).

Inter-array cables would be buried using a jet trencher. Noise emitted by jet trenching activities is broadband and generally consistent with that produced from routine vessel operations (Nedwell *et al.*, 2003).

NMFS' generalized 120-dB acoustic threshold for exposures to continuous noise is guidance to help predict when marine mammals will likely respond in a manner that constitutes Level B harassment and estimate how many marine mammals are likely to respond

in that manner; contrary to the suggestion of the commenter, it is not something that NMFS needs to “enforce.” As described in the proposed IHA notice, NMFS generally predicts that marine mammals are likely to be affected in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above 120 dB (RMS SPL) for continuous sources (e.g., vessel noise considered here). However, contextual factors and qualitative parameters play an important role in determining the potential for take and should be considered as well when determining the likelihood of incidental take. As described in the proposed IHA notice, the potential for behavioral response to an anthropogenic source can be highly variable and context-specific (Ellison *et al.*, 2012). In addition to received sound level, factors such as activity state, the novelty of a sound, and distance between the sound source and the receiver may influence whether an animal exhibits a behavioral response (Ellison *et al.*, 2012). As NMFS has previously articulated, there are situations in which other contextual factors may appropriately support a determination that take is unlikely, even if an animal is exposed to levels above the behavioral harassment threshold.

NMFS acknowledges that, in limited cases, take of marine mammals by Level B harassment has been authorized incidental to vessel-related activities such as tugging and positioning activities that emit continuous noise into the underwater environment for extended periods of time (e.g., 87 FR 62364, October 14, 2022). However, in recent cases where NMFS authorized take for these activities, the take was requested by an applicant and NMFS made a case-specific decision based on the specific circumstances, explaining the conservative nature of the analysis and/or discussing specific factors other than the received level alone that contributed to the decision. In the cited case, for example, NMFS considered the potential for Level B harassment from tugging and positioning activities in a concentrated area for an extended period of time, in an area inhabited by a small resident stock of marine mammals in a fairly enclosed body of water (Cook Inlet), and authorized take, by Level B harassment, for tugging and positioning activities.

While NMFS recognizes elevated noise levels from vessels, the determination of whether harassment occurs in response to exposure to activities other than pile driving is based on several factors. Monitoring reports received under earlier take

authorizations show few, if any, behavioral responses during activities involving thruster use and other broadband or continuous construction noises similar to noise levels at or below typical vessel levels. For example, during the Neptune Liquefied Natural Gas (LNG) pipeline operations project in Massachusetts Bay from July 1, 2009, through June 30, 2010, twenty-six marine mammals were sighted, and twenty of these marine mammals entered the Level B harassment zone while construction activities, including thruster use, were taking place. None of the marine mammals observed within the Level B harassment zone exhibited “any modifications to their behavior that could be directly and definitively related to the construction activities” (ECOES Consulting, Inc., 2010). In 2015, Northeast Gateway L.P., (Northeast Gateway) requested take by Level B harassment incidental to Deepwater port repair activities occurring in Massachusetts Bay, including active use of DP thrusters. NMFS authorized the requested take incidental to the specified activities. The only two marine mammal sightings that occurred during the effective period of the authorization took place while vessels were actively using thrusters, and no behaviors that would suggest harassment were observed (TetraTech, 2017).

NMFS acknowledges that noise emitted by Vineyard Wind project-related vessels and their DP thrusters, as well as jet trenching activities, may sometimes result in marine mammals being exposed to received levels above 120 dB and that vessel noise impacts the soundscape. However, as described in the *Behavioral Effects* section of the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* of the proposed IHA notice, the likelihood of Level B harassment is not based upon received level alone. There are a variety of studies (Nowacek *et al.*, 2004; Kastelein *et al.*, 2012 and 2015) indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). Nowacek *et al.* (2004) found that North Atlantic right whales exposed to alert signals and approaching vessel sounds exhibited a variety of responses. While 5 of the 6 whales altered their behavior in response to the alert signal, the whales did not exhibit a response to a vessel noise recording which simulated a 120 m container ship passing within 100 meters (m), equating to approximately 135 dB received level, or

the noise of transiting vessels passing within 1 nautical mile (nm) from the whales (Nowacek *et al.*, 2004). During Vineyard Wind 1’s 2023 construction activities (RPS, 2024), PSOs observed more baleen whales, engaged in various activity states, in the Project Area while the impact hammer was off (77 detection events) than when it was on (22 detection events), although multiple vessels and DP thrusters were present and likely engaged while the impact hammer was off. These observations suggest that noise emitted from vessels, including those operating DP thrusters and jet trenching activities, is notably less likely to elicit avoidance and other behavioral responses from marine mammals that constitute Level B harassment. Given marine mammal exposure to extensive vessel traffic in the Atlantic Ocean, including from major ports and major shipping lanes near the project site, habituation to similar noise from vessels, thrusters, and trenching may be expected. As described in the proposed IHA notice, habituation can occur when an animal’s response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003) as is typically considered the case with exposure to noise from vessel propulsion, noting that the typical predictable movement and operation of vessels also influences the lower likelihood of behavioral disturbance. In the case of the Vineyard Wind 1 Project, the marine mammal species potentially affected by the project inhabit areas subject to very high, consistent ship traffic (Hatch *et al.*, 2008; Van Parijs *et al.*, 2023).

Based on the available data, project-related vessels, including those operating thrusters, are not significantly louder than large cargo vessels marine mammals in the project area are accustomed to encountering. The median rms sound pressure level (SPL) measured at a range of 750 m from the piling (the Orion), and support vessels prior to pile driving of the first 13 piles from the Vineyard Wind 1 2023 construction activities measured approximately 134 dB (Küsel *et al.*, 2024 Nedwell *et al.* (2003) backcalculated SPL source levels for jet trenching activities to be 178 dB, assuming a propagation loss of 22logR and recording 160 m from trenching activity. A reasonable estimate for source level of a container ship, estimated from the bulk data of MacGillivray and de Jong (2021), is approximately 180 dB. Using practical spreading, this source level yields

approximately 137 dB at a range of 750 m.

Although lack of detected behavioral disruption during previous monitoring described above does not prove there are no undetected responses that may qualify as Level B harassment, these findings clearly suggest that marine mammals continue their regular behavior patterns in the presence of vessels, including those operating DP thrusters for the project. In consideration of the discussion above, we conclude that exposure to vessel noise for this Project, including from DP thrusters and trenching activities, is not likely to result in Level B harassment simply based on exposure above the 120 dB threshold.

Comment 5: Commenters suggest the NMFS should mitigate for behavioral take that may occur incidental to exposure to noise from vessels, thrusters, and trenching that exceed NMFS' behavioral harassment threshold for continuous noise (120 dB rms).

Response: As described in Comment 4, NMFS disagrees that exposure to vessel noise from the Project, including from DP thrusters and trenching activities, is likely to result in take under the MMPA (see response to Comment 4 above). However, NMFS does agree that vessel quieting, in general, is an important tool for protecting marine species and acoustic habitat. Vineyard Wind has committed to minimally use DP thrusters such that unnecessary use of thrusters and emission of continuous noise into the underwater environment is avoided. In addition, Vineyard Wind is required to abide by any existing vessel speed regulations as well as vessel strike avoidance measures in the IHA. When vessels are required to maintain a 10 knot (kn) (11.5 mph) speed restriction (see Vessel Strike Avoidance Measures in the Mitigation section), continuous noise released into the environment from the vessels is also reduced. The relationship between vessel speed and its associated underwater radiated noise is well established and it is generally assumed that noise levels depend on vessel speed as $60 \log_{10}(V)$ (MacGillivray and de Jong, 2021), where V is the vessel speed. Further, speed limitations have been shown to be an effective tool in mitigation, as even small speed reductions of many vessels are capable of substantially reducing noise impacts to marine mammals (Findlay *et al.*, 2023).

Comment 6: Commenters note that it is inappropriate for Vineyard Wind 1 to estimate its own impacts, analyze its own impacts, and then restrict IHA

public document estimates to what it has determined to be appropriate.

Response: NMFS disagrees that the process of Vineyard Wind 1 estimating and analyzing impacts of the proposed construction activity is inappropriate. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals, 50 CFR 216.104(a)(1), as well as an analysis of the impacts of the activity on marine mammal species or stocks and their habitat. Thus, the "specified activity" for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. NMFS evaluates the applicant's analysis using the best available information and makes the necessary findings and determinations on how the proposed activities may impact marine mammals, their habitats, and availability of marine mammals for subsistence uses, if relevant. As indicated in the proposed IHA, based on our independent evaluation, NMFS concurred with the analysis methods and results presented by Vineyard Wind 1 and carried them forward in the proposed IHA. NMFS is required to post proposed IHAs for public comment in addition to supporting information. NMFS also posts all monitoring reports (including any past monitoring reports for past authorizations) on our website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. As the required documentation mentioned above has been posted for the Vineyard Wind IHA request, NMFS disagrees that "IHA public documents" have been restricted.

Comment 7: Commenters request that the pile driving noise model, with all assumptions, be made public along with any technical information relevant to the initial noise exceedances during pile driving in 2023.

Response: Relevant information on how the pile driving noise model works, assumptions, and technical information related to sound field verification (SFV) results were publicly available. Of note, only the modeled distances to the Level A harassment thresholds were applied to this IHA; the distance to the Level B harassment threshold is based on *in situ* data collected during foundation installation in 2023. A description of the pile driving source and propagation models used to estimate distances to PTS thresholds was made publicly available as an appendix within the Vineyard Wind 1 Construction and

Operations Plan (COP), in the form of an acoustic modeling report (Pyc *et al.*, 2018) and is available online as Appendix III in the COP at: <https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/MA/Vineyard-Wind/Vineyard-Wind-COP-Volume-III-Appendix-III-M.pdf>. While source and propagation models are proprietary (most developed by JASCO) and not available to the public, Appendix A of Pyc *et al.* (2018) includes references describing their theory of calculation. Technical information and results related to SFV conducted during pile driving in 2023, upon which the Level B threshold analysis for the current IHA is based, are also publicly available on NMFS' website.

Comment 8: Commenters indicate that NMFS and Vineyard Wind 1 have underestimated both impulsive and continuous noise levels and suggest that the actual exposure to noise levels from pile driving is greater than NMFS acknowledges in its existing protective measures. Commenters request that NMFS conduct a reassessment of RMS computation methods.

Response: NMFS disagrees with the commenters that noise levels are underestimated and a reassessment of RMS computation methods is necessary. NMFS continuously assesses its analysis based on new science, including acceptable and ideal methods for calculating underwater sound metrics. Our current methodology is to use a 90 percent energy window for computing RMS sound pressure levels for impulsive sources (Madsen, 2005). The 90 percent energy envelope used by NMFS is a commonly used convention (Merchant *et al.*, 2015), and is even stated as the recommended energy window in the ISO standard 'Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving' (ISO 18406, 2017). Importantly, the distance to the Level B threshold is based upon *in situ* SFV measurements, and not modeling. Finally, there is no take expected or authorized from continuous sources.

Comment 9: A commenter notes that condition 3(b) of the proposed IHA indicates that no take by Level A harassment is authorized, however, proposed take by Level A harassment is listed for species in table 1.

Response: NMFS appreciates the commenter's recognition that take by Level A harassment was included in table 1 yet not described in condition 3(b) of the IHA. This inconsistency has been corrected in the final IHA.

Mitigation

Comment 10: Multiple commenters stated that bubble curtains are not an efficient mitigation measure as bubble curtains do not attenuate sounds at lower frequencies and therefore are not effective in preventing take by Level A harassment of North Atlantic right whales. A commenter further indicated that this lack of mitigation should be incorporated into take calculations. Commenters also cite seabed refraction as a mechanism for sound to circumvent bubble curtains and impact marine mammals, thus resulting in the use of bubble curtains being insufficient as a mitigation measure. Commenters further note that since bubble curtains will be used as a mitigative measure yet are not effective for mitigation, NMFS will not be able to measure impacts to ESA-listed baleen whale species.

Response: In the **Federal Register** notice for the proposed IHA (89 FR 31008, April 23, 2024), NMFS described the best available science, which supports the assumption that attenuation can be reliably achieved using noise attenuation systems such as a double bubble curtain. The commenters indicated that sound may circumvent bubble curtains (such as through seabed refraction), citing Rand (2023). NMFS agrees that attenuation levels vary by frequency band and that bubble curtains attenuate higher frequency sounds more effectively; however, NMFS disagrees that lower frequency bands, which are important to consider when evaluating impacts, are not attenuated at all. The data from Bellmann (2021) shows that for both single and double bubble curtains, more than 10 dB of attenuation was achieved for bands as low as 32 Hz. While it is true that performance diminishes significantly at lower frequencies (<32 Hz), those bands also contain significantly less pile driving sound and are 16+ dB outside the most susceptible frequency range for low-frequency cetaceans. NMFS agrees that a fraction of the sound does travel through the sediment and rejoin the water column beyond the extent of the bubble curtain, and therefore is not attenuated by the bubble curtain. NMFS is not aware of any noise mitigation system available which directly deals with sediment-borne noise. Despite this limitation, bubble curtains have been shown to be highly effective in mitigating sound in the water column (Bellmann, 2021; Caltrans, 2020).

Comment 11: One commenter notes that while the proposed IHA includes language about soft starts as a mitigation measure, there is no evidence for the

efficacy of this measure. The commenter further notes that the Vineyard Wind 1 Biological Opinion states that there is insufficient evidence that the soft start measure would alter take estimates.

Response: NMFS disagrees with the commenter that there is no evidence for the efficacy of soft start as a mitigation measure, and also notes that the soft start measure was not used as a basis for altering take estimates. A soft start, in which an initial set of hammer strikes is performed at a reduced energy level, is designed to provide a warning to marine mammals and a chance to leave the pile driving area before the hammer begins operating at full capacity. The soft start method has been found to reduce the cumulative sound exposure of animals in an area (Ainslie and von Benda-Beckmann, 2012). Ainslie and von Benda-Beckmann (2012) modeled the efficacy of the soft start method and found that soft start can be an effective mitigation measure when the animals respond to the sound source by swimming away. Various species of marine mammals have been observed to behaviorally respond to soft starts (also called ramp-ups) such that the risk of PTS and TTS is decreased (e.g., Stone *et al.*, 2017) and modeling studies have demonstrated similar effectiveness (von Benda Beckmann, *et al.*, 2013). As described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat in the **Federal Register** notice of the proposed IHA, marine mammals may avoid areas of impact pile driving (e.g., Tougaard *et al.*, 2009; Dähne *et al.*, 2013; Thompson *et al.*, 2013; Russell *et al.*, 2016; Brandt *et al.*, 2018).

Also, the Biological Opinion specifies that while NMFS is “not able to predict the extent to which the soft start will reduce the number of whales exposed to pile driving noise or the extent to which it will reduce the duration of exposure. Therefore, while the soft start is expected to reduce effects of pile driving, we are not able to modify the estimated take numbers to account for any benefit provided by the soft start.” This language appropriately expresses the expected benefits of soft start, while acknowledging that they are difficult to quantify, which is why there are no adjustments to take numbers based on the fact that soft start is required.

Comment 12: Multiple commenters cite the Rand Acoustics report (Rand, 2024) as calculating acoustic impacts greater than estimated by Vineyard Wind 1 and indicating the need for larger clearance zones. Rand Inc., (2024) asserts that pile driving noise rivals the loudness and frequency range of seismic air gun arrays. Commenters claim that

the proposed clearance and shutdown zones are insufficient to effectively reduce impacts to marine mammals because sound exposure, in terms of impulsive and continuous noise levels, is underestimated. Commenters indicate that more research on marine mammal avoidance of impulsive sound should be incorporated into the analysis to determine how to expand mitigation zones, and that the current mitigation zones for endangered species are not large enough. One commenter further notes without justification that all mitigation zones, as well as clearance and shutdown procedures, proposed for North Atlantic right whales should be applicable to all endangered marine mammal species, specifically the sperm whale, fin whale, and sei whale.

Response: NMFS reviewed the Rand Inc. (2024) report and found that the initial modeling done for Vineyard Wind 1 considered source levels reasonably consistent with both Rand’s results and the Vineyard Wind 1 2023 SFV report. The extensive measurements performed during the 2023 IHA for Vineyard Wind 1 construction allowed NMFS an opportunity to review data collected at several distances from the source. Based on those data, NMFS has determined that the distances to the Level A and Level B harassment thresholds (and any associated mitigation zones) during the 2024 Phase 2 pile installation activities are reasonable estimates based on the best available science. The results show that for Level A harassment, the model predicted acoustic ranges were on average conservative. Therefore, considerations related to Level A take based on the initial modeling were validated by the 2023 SFV campaign. For Level B, the IHA analysis here was based directly on applicable measurements from the 2023 campaign. Thus, with regard to impact pile driving, NMFS’s acoustic ranges and take estimates are well supported by extensive field measurements, are consistent with the data presented in Rand (2024), and therefore do not warrant revisions.

NMFS disagrees that expanded shutdown and clearance zones are necessary under the least practicable adverse impact standard for marine mammal species or stocks, including those listed under the ESA. As described in the *Proposed Mitigation* section in the **Federal Register** notice for the proposed IHA and the Mitigation section of this notice, there is a required shutdown if a North Atlantic right whale is visually observed at any distance or acoustically detected within the 10 km PAM monitoring zone. In

addition, impact pile driving may not begin if a North Atlantic right whale is visually sighted or acoustically detected within the pre-start clearance zone at any distance during the 30-minute clearance period. NMFS neither anticipates nor authorizes any take by Level A harassment of North Atlantic right whales.

Some mitigation measures in the IHA are centered around North Atlantic right whales because of the species status and general fitness of individuals. NMFS acknowledges that seasonal closures are based on North Atlantic right whale densities and that the maximum density months for other ESA-listed species may occur outside of the seasonal closures. Other enhanced mitigation for North Atlantic right whales includes delaying or shutting down pile driving should a North Atlantic right whale be observed at any distance by a foundation installation PSO or acoustically detected within the PAM monitoring zone. If clearance and shutdown zones were increased for other ESA-listed species, it would result in longer construction time frames, prolonging the time periods over which marine mammals may be exposed to construction-related stressors, as well as creating impracticable operational scenarios for the applicant. It has been modeled and is logical that projects should be constructed as quickly as possible during times when the potential for a species of concern to be present is lowest (Southall *et al.* 2021). Accordingly, NMFS has determined that the current clearance and shutdown zones together with other mitigation measures effect the least practicable adverse impact on the affected species or stocks of marine mammals.

Comment 13: A commenter states that the proposed shutdown procedures are not strict enough and should be more comparable to oil/gas authorizations that require shutdown for live marine mammal strandings and “millings within 50 km of survey operations.”

Response: NMFS agrees that the addition of the measure the commenter recommended is appropriate and has added a measure to the IHA for Vineyard Wind 1 to cease pile driving in the event of a live cetacean stranding (or near-shore atypical milling) event within 50 km of the pile driving operations, where the NMFS Marine Mammal Stranding Network is engaged in herding or other interventions to return animals to the water.

Comment 14: While commenters acknowledge that time of year restrictions on pile driving are effective mitigation measures, multiple commenters suggested that the proposed

seasonal restrictions are insufficient as the restriction period does not account for North Atlantic right whales, sperm whales, and fin whales in the Project Area outside of those months. Commenters further note that endangered marine mammal species are present in the Project Area year-round, especially North Atlantic right whales during the late summer.

Response: NMFS has restricted foundation installation pile driving from January through May, which represents the period when North Atlantic right whales are most likely to be in the Project Area in higher numbers and engaged in foraging behavior. A commenter indicated that the seasonal restriction period of January through May does not account for the heightened presence of North Atlantic right whales in southern New England during the late summer (Quintana-Rizzo *et al.*, 2021). However, North Atlantic right whale presence during the summer is typically closer to Nantucket Shoals (Quintana-Rizzo *et al.*, 2021; Van Parijs *et al.*, 2023) and not concentrated within the lease area or the LIA. In addition, North Atlantic right whale densities are highest in the lease area and LIA from January through May (Roberts *et al.*, 2023), further supporting that period as an appropriate time frame for implementing seasonal restrictions for North Atlantic right whales. NMFS acknowledges that seasonal closures are based on North Atlantic right whale densities and the maximum density months for other ESA-listed species, such as fin whales and sperm whales, and stocks experiencing UMEs, such as minke whales, may occur outside of the seasonal closures (table 9). However, no UMEs are active for ESA-listed marine mammals other than the North Atlantic right whale and there is other mitigation for those species. See Comment 12 for additional detail on implementing additional mitigation measures for Endangered Species Act (ESA)-listed and species and stocks experiencing UMEs.

Seasonal restrictions are not in place from June through December because North Atlantic right whale densities are lower. During those months pile driving may take place, Vineyard Wind 1 is required to implement mitigation measures during pile driving to reduce impacts to marine mammals. These mitigation measures include clearance and shutdown zones, visual and acoustic monitoring of zones by PSOs and PAM operators, and use of noise attenuation devices to reduce impacts to marine mammals. These measures are consistent with those required and successfully implemented under

previous incidental take authorizations, as described in the Mitigation section. Furthermore, VW1 is required to establish stronger mitigation measures for endangered species, such as fin whales and sperm whales; for example those species have larger clearance and shutdown distances than other marine mammals.

During November and December, Vineyard Wind 1 will be required to follow enhanced mitigation measures if impact pile driving occurs. From November 1–December 31, if pile driving has been shut down or delayed due to the presence of 3 or more North Atlantic right whales, pile driving will be postponed until the next day. As December represents the highest density month for North Atlantic right whale outside of the January through May restriction, Vineyard Wind 1 will be required to follow additional enhanced measures beyond those required in November. In December, Vineyard Wind 1 must conduct, in addition to PAM, extended surveys using the dedicated PSOs vessels prior to starting or resuming pile driving as described in their Pile Driving Monitoring Plan. With the application of these enhanced mitigation and monitoring measures in November and December, impacts to NARW will be further reduced. Accordingly, NMFS has determined that the seasonal restrictions, together with other mitigation measures, effect the least practicable adverse impact on marine mammals.

Comment 15: One commenter claims that as more research is needed on marine mammal hearing, the precautionary principle should be employed by expanding mitigation zones, increasing accountability of vessel operators to offshore wind vessels, applying more checks and balances to those conducting construction activities, and reviewing vessel transcripts. The commenter specifically states that limited data on PTS onset thresholds as a result of data coming from the same species and/or same captive animals results in dependent data sets, and requests that 6 month moratorium be placed on all east coast wind projects until detailed study can be conducted by independent researchers.

Response: MMPA and its implementing regulations require that IHAs be issued based on the best scientific evidence available, if the required findings can be made. NMFS agrees with the commenter that additional research will continue to improve our understanding of the impacts of anthropogenic noise on marine mammal hearing, yet disagrees

that expanded mitigation and monitoring measures or a moratorium on east coast wind projects are necessary under the least practicable adverse impact standard. See Comment 26 for details on data related to PTS onset thresholds. The IHA includes general conditions to hold Vineyard Wind 1 and its designees (including vessel operators and other personnel) accountable while performing operations under this IHA. In addition to requiring Vineyard Wind 1 to abide by vessel strike avoidance measures and a NMFS-approved marine mammal vessel strike avoidance plan, Vineyard Wind 1 is also required to equip all vessels with properly installed, operational Automatic Identification System (AIS) device and report all Maritime Mobile Service Identity (MMSI) numbers to NMFS. See Comment 12 for additional detail on expanding mitigation zones. The required mitigation and monitoring measures described in the **Federal Register** notice for the proposed IHA and this notice were designed based upon the best available science. In terms of a moratorium on east coast wind projects, it is beyond the scope of NMFS' authority to place a moratorium on these projects as NMFS only authorizes marine mammal take incidental to an activity (provided we make the necessary findings) and not the activity itself.

Comment 16: One commenter notes that the vessel speed restriction of traveling a maximum of 10 kn (11.5 mph) does not apply to crew transfer vessels. The commenter suggests that these restrictions should apply to crew transfer vessels as these vessels undertake the majority of project trips.

Response: NMFS agrees with the commenter that the vessel speed restriction of traveling a maximum of 10 kn (11.5 mph) should apply to all project vessels in a transit corridor if PAM is not used to monitor the transit corridor. NMFS included this measure in the **Federal Register** notice for the proposed IHA as well as the final IHA.

Comment 17: A commenter notes that the IHA should be more specific in defining the vessel transit corridor.

Response: NMFS appreciates the commenter's request to define the vessel transit corridor. The transit corridor is defined as the route a vessel takes from a port to the lease area and return. This definition is provided in the Vessel Strike Avoidance Measures section of this **Federal Register** notice as well as condition 5(b)(viii) of the IHA.

Monitoring, Reporting, and Adaptive Management

Comment 18: Multiple commenters claim that NMFS should require 100 percent on board agency enforcement coverage during the proposed Vineyard Wind 1 construction activities instead of allowing self-reporting and self-verification of acoustic impacts by Vineyard Wind 1, specifically regarding critically endangered species. The commenters further note that NMFS should require enforcement personnel on board project vessels or camera coverage of all offshore wind activity with camera footage that is reviewed by NOAA's Office of Law Enforcement (OLE). In order to verify that Vineyard Wind 1 adheres to all sound attenuation measures, a commenter further recommends that NMFS place an Office of Protected Resource "observer" on the vessel to confirm sound attenuation for each monopile. A commenter also suggests that NMFS hire a third-party safety officer to observe pile driving, confirm pile refusal or use of lower hammer energies, and create a safety plan for PSOs and PAM operators in the event of pile refusal.

Response: The IHA requires multiple mitigation and monitoring measures to effect the least practicable adverse impact on affected species or stocks of marine mammals, as well as extensive reporting requirements that document compliance and observed marine mammal responses to the activities by independent NMFS-approved PSOs. In terms of vessel strike avoidance measures, NMFS maintains an Enforcement Hotline for members of the public to report violations of vessel speed restrictions. While it is beyond the scope of 101(a)(5)(D) of the MMPA to include requirements of NMFS OLE personnel, the IHA includes two provisions related to the commenters recommendation: one states that by accepting the issued IHA, Vineyard Wind 1 consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities this IHA covers, for the purposes of evaluating the implementation and effectiveness of measures contained within the IHA; the other states that it is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM Operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or

offensive environment and indicates that personnel may report any violations to the NMFS Office of Law Enforcement.

NMFS is also not requiring additional observers to "confirm sound attenuation" for each monopile. As described in both the **Federal Register** notice for the proposed IHA and this notice, NMFS has included requirements for sound attenuation methods that were previously evaluated in SFV measurements conducted during Vineyard Wind 1 construction activities in 2023. Further, additional in situ SFV measurements will be conducted to ensure that sound levels are at or below those modeled (assuming 6 dB attenuation for Level A harassment) or those measured and expected (for Level B harassment) in 2023. In addition, Vineyard Wind 1 will be required to follow specific protocol when conducting SFV measurements, as described in conditions 5(a)(xvi–xxi) in the IHA, and report SFV measurements to NMFS Office of Protected Resources within 48 hours of each foundation installation as well as on a weekly, monthly, and annual basis. Frequent reporting will ensure that NMFS is aware of any threshold exceedances and the measures Vineyard Wind 1 would be implementing to ensure the Level A and Level B harassment isopleths do not exceed those modeled or expected for foundation installation.

Comment 19: One commenter expressed concern that NMFS should hold Vineyard Wind 1 accountable for maintaining sound levels during construction activities. The commenter further noted that submitting final SFV measurements within 90 days of completing SFV is not acceptable and removes accountability from Vineyard Wind 1. The commenter suggested that NMFS should require Vineyard Wind 1 to complete the final results of SFV measurements within 48 hours of pile driving completion for each pile, instead of 90 days, and future piles should be dependent upon completion, review, and NMFS acceptance of daily SFV reports. Another commenter suggested that each monopile should be required to have its own SFV measurements registered throughout pile driving with a NMFS observer who can monitor and stop by pile driving, if necessary, until attenuation is achieved.

Response: NMFS agrees with the commenters that Vineyard Wind 1 should be held accountable for maintaining sound levels during construction activities, though, as described above in Comment 18, while

it is possible to measure the overall sound levels that include the NAS, there is no way to specifically confirm a 6-dB sound reduction as compared to an unattenuated pile. *In situ* measurements will continue to be conducted to verify sound levels are at or below those modeled or measured, as specified.

Although NMFS requires a SFV report to be submitted within 90 days of activity completion, NMFS also requires Vineyard Wind 1 to review SFV results within 24 hours and submit weekly, monthly, annual, and situational reports. As described in the **Federal Register** notice for the proposed IHA and this notice, Vineyard Wind 1 is required to provide the initial results of the SFV measurements to NMFS in an interim report after each foundation installation event as soon as they are available and prior to a subsequent foundation installation, but no later than 48 hours after each completed foundation installation event. In addition, each monopile must be acoustically monitored either using thorough SFV or abbreviated SFV. Again, it is not known if attenuation is achieved until results are reviewed within 24 hours, however, if SFV measurements exceed those distances that are modeled (Level A harassment) or measured (Level B harassment), Vineyard Wind 1 must notify NMFS and implement mitigative measures, as described in condition 5(a)(xxi) of the IHA.

Comment 20: A commenter claims that it is insufficient to visually and acoustically monitor for marine mammals for only 1 hour prior to beginning construction activities. Another commenter further indicates that NMFS should require two active PAM operators (instead of one) to increase situational awareness and active monitoring of hydrophones during the 60 minute pre-start clearance period.

Response: NMFS agrees with the commenter that monitoring more than one hour prior to beginning construction is appropriate. In addition to a 60 minute pre-start clearance period for visual observation and the requirement for PAM operator(s) to actively monitor hydrophones for 60 minutes prior to commencement of construction activities, both the proposed and final IHA include a requirement that Vineyard Wind 1 must also review PAM data collected for at least 24 hours in advance of pile driving activity to increase situational awareness of marine mammals in the area. Davis et al. (2023) found that by increasing pre-construction acoustic monitoring from 1 hour to 18 hours

increased the likelihood of detecting a North Atlantic right whale from 4 percent to 74 percent.

At least one PAM operator is required to actively monitor and review PAM data from at least the past 24 hours to increase situational awareness. However, the number of active on-duty PAM operators must be sufficient to meet the requirements of the IHA. Vineyard Wind 1 is required to submit a PAM Plan for NMFS approval, which will specify the planned number of PAM operators that would be active to meet the IHA requirements.

Comment 21: Commenters claim that PSOs have poor detection capabilities and should not be relied upon for monitoring, most notably in low visibility conditions. A commenter cited the Williams *et al.* (2016) study, specifically noting that in the “worst visibility conditions” PSO detection probability was near zero at 1,000 m and did not exceed 50 percent until the distance is less than about 500 meters. The same commenter also indicated that the “overall efficacy of PSOs is approximately 9 percent in detection” and the “overall efficacy” of PAM “is approximately 25 percent.” A commenter further claims that PAM and low visibility equipment (*i.e.*, night vision goggles, infrared devices) proposed for monitoring are not effective and offer unreliable rates of detection, citing that PAM as a monitoring tool includes numerous limitations such as detecting marine mammals when they are not actively vocalizing and vocalizations of sufficient magnitude.

Response: NMFS disagrees that monitoring using a combination of PSOs and PAM will not be effective at detecting marine mammals. As described in the **Federal Register** notice for the proposed IHA, NMFS is requiring that Vineyard Wind 1 employ both visual and PAM methods for monitoring. Visual and PAM approaches are well understood to provide best results when combined together (*e.g.*, Barlow and Taylor, 2005; Clark *et al.*, 2010; Gerrodette *et al.*, 2011; Van Parijs *et al.*, 2021). The use of PAM will augment visual detections for foundation pile driving, especially for activities with the largest zones. NMFS is requiring the use of PAM to monitor 10 km zones around the piles and that the systems be capable of detecting marine mammals during pile driving within this zone. For these reasons, NMFS finds that the suite of visual and acoustic monitoring measures in the **Federal Register** notice for the proposed IHA and carried forward in the IHA are based on the best

available scientific information and are effective at detecting marine mammals.

We recognize that the distances at which marine mammals may be observed are both species and weather dependent. The commenter relies on Williams *et al.* (2016), in claiming that PSO detection probability was near zero at 1,000 m, however, this detection probability was based upon monitoring during poor visibility conditions. As visibility conditions improved during the study, PSO detection probability increased. Under this IHA, Vineyard Wind 1 is required to conduct monitoring in a manner such that PSOs can visually monitor an area no smaller than the minimum visibility zone (4,000 m; 13,123 ft). Pile driving may not occur in any conditions (including poor visibility conditions such as fog, rain, or darkness) if PSOs are not able to sight marine mammals in this minimum visibility zone out to this distance. During construction of Vineyard Wind 1 in 2023 and South Fork Wind, PSOs observed baleen whales at ranges as distant as 4 km (13, 123 ft) and 23 km (75,459 ft), respectively (RPS, 2024; South Fork Wind, 2024). The commenter did not provide evidence to support claims the minimum visibility zone could not be effectively monitored during good weather conditions, and NMFS disagrees with the commenters that, during good weather conditions, Vineyard Wind 1 would not be able to effectively monitor the minimum visibility zone.

NMFS recognizes that visual detection may not be 100 percent effective. Animals may be missed because they are underwater (*i.e.*, availability bias) or because they are available to be seen but are missed by observers (*i.e.*, perception and detection biases) (*e.g.*, Marsh and Sinclair, 1989). However, visual observation remains one of the best available methods for marine mammal detection.

The commenter indicates that PAM is limited to only detecting animals that are vocalizing, and vocalizations must be of “sufficient magnitude to surmount background noise” and be detected at the receiving station. NMFS acknowledges these limitations, however, there are a wide variety of PAM systems available on the market (van Parijs *et al.*, 2021), ranging from omnidirectional independent acoustic buoys to multi-channel hydrophone arrays that are capable of detecting marine mammals in real-time. Real-time (or near real-time) stationary and mobile PAM systems are currently being used to inform management decisions and literature supports the effectiveness of real-time PAM at detecting marine

mammals, including North Atlantic right whales (Ceballos *et al.*, 2022; Murray *et al.*, 2022; Baumgartner *et al.*, 2020; Baumgartner *et al.*, 2019). In 2023, Vineyard Wind documented 253 acoustic detections of protected species during the project (with and in the absence of pile driving). Of the detections, 206 detections were unidentified dolphin, 45 detections of fin whales, and two detections of unidentified baleen whales (RPS, 2024). Vineyard Wind 1 is required to submit a PAM Plan to NMFS that demonstrates the system will be able to detect North Atlantic right whales at ranges up to 10 km (32,808.4 ft). To date, offshore wind developers have used bottom-mounted PAM systems located at distance from piles being installed. The final IHA requires the PAM system be placed no closer than 1 km (3,280.8 ft) from the pile being installed to minimize masking of North Atlantic right whale calls by construction noise.

Comment 22: A commenter indicates that all reports of endangered species should be logged and reported to NMFS within 24 hours.

Response: As described in the proposed IHA, Vineyard Wind 1 is required to report North Atlantic right whale sightings and acoustic detections to NMFS within 24 hours. As mentioned above in Comment 12 above, some mitigation, monitoring, and reporting measures are focused on North Atlantic right whales due to the species status and general fitness of individuals. It is not practicable or necessary to require Vineyard Wind 1 to report all sightings of endangered species to NMFS within 24 hours, unless a detection is of an injured, entangled, or dead marine mammal (see *Reporting* section of Monitoring and Reporting), and the commenter does not provide a rationale for the recommended change. However, all whale sightings must be reported to vessel captains and PSOs. In addition, NMFS is requiring all acoustic and visual detections of marine mammals to be submitted in weekly, monthly, and annual reports. NMFS disagrees that more frequent reporting of all ESA-listed marine mammal species is necessary and considers the required monitoring and reporting requirements in the IHA to be robust and appropriate.

Effects Assessment

Comment 23: Multiple commenters have expressed concern for impacts of offshore wind construction activities on marine mammal prey. One commenter expressed concern specifically regarding impacts to North Atlantic right whale prey, such as copepods, due to heat emanating from electric cables

associated with offshore wind farm development. In addition, commenters express concern for operational impacts on North Atlantic right whale prey. One commenter indicates that based upon the size of the turbines, impacts to North Atlantic right whale prey could occur up to 60 miles outside of the Lease Area. Another commenter notes that the **Federal Register** notice for the proposed IHA also does not address potential operational impacts to water circulation patterns that produce zooplankton aggregations near Nantucket Shoals. The commenter claims that due to the overlap between a NOAA conservation buffer near Nantucket Shoals and the Project Area, NMFS should not issue the IHA to Vineyard Wind 1.

Response: In the **Federal Register** notice for the proposed IHA, NMFS considered the potential impacts of structures and operational noise on marine mammals and their habitat, including prey, based on the best available science (see the *Potential Effects to Marine Mammal Habitat and Potential Effects from Offshore Wind Farm Operational Noise* in the **Federal Register** notice for the proposed IHA). NMFS provides further analysis of the impacts of turbine operation on marine mammal habitat and prey in the *Impact on Habitat and Prey* section of the Negligible Impact Analysis and Determination section of this **Federal Register** notice as well as in the reinitiated Biological Opinion. The commenter did not provide scientific evidence that suggests the analysis within the **Federal Register** notice for the proposed IHA was unsupported. NMFS has fully evaluated the potential impacts of both issuing this IHA over the one-year effective period and the potential impacts from long-term operations via the Biological Opinion (BiOp). We refer the reader to the Potential Effects of the Specified Activities on Marine Mammals and Their Habitat section and the Negligible Impact Determination section in the proposed and final IHA notice for further details.

NMFS is evaluating the effects of authorizing the take of marine mammals incidental to pile driving 15 monopile foundations. Vineyard Wind operations commenced in 2023 and would be ongoing without installation of the remaining piles. BOEM is the agency responsible for approving construction and operations of offshore wind farms. Impacts to the environment for other project related activities such as sending power to shore through buried electric cables was analyzed in BOEM's Environmental Impact Study (EIS) for

the Project and are outside the scope of the NMFS' MMPA decision.

Comment 24: Commenters claim that due to impacts to the North Atlantic right whales, the proposed IHA violates the Endangered Species Act (ESA) and reinitiation of consultation indicates that Vineyard Wind 1 was not compliant with the 2021 IHA. In addition, one commenter suggests that all reasons and information necessitating the reinitiation of the Vineyard Wind 1 Biological Opinion be made available for public comment including an extension to the public comment period.

Response: NMFS disagrees with commenters that the proposed IHA violates the ESA or that the reinitiation of the consultation indicates that Vineyard Wind was not compliant with the 2023 IHA. On May 23, 2024, NMFS Office of Protected Resources reinitiated its ESA section 7 consultation due to consideration of updated marine mammal density data which have become available since issuance of the 2023 IHA and analysis of SFV data collected by Vineyard Wind 1 during the 2023 construction campaign in the analysis for this IHA. NMFS also considered modified mitigation and monitoring measures in this analysis. NMFS Greater Atlantic Regional Fisheries Office (GARFO) completed its consultation on August 23, 2024 and concluded that the proposed actions were likely to adversely affect but were not likely to jeopardize the continued existence of the North Atlantic right whale, fin whale, sei whale, or sperm whale. The reasons and information necessitating the reinitiation of the Vineyard Wind 1 Biological Opinion are described in the Endangered Species Act section of this **Federal Register** notice. The **Federal Register** notice for the proposed IHA also described the request for reinitiation of consultation. NMFS did not deem extension of the public comment period for the proposed IHA necessary or appropriate.

Comment 25: Multiple commenters claim that NMFS did not evaluate the cumulative effects of all projects (e.g., the offshore wind projects of other companies) on marine mammals. One commenter claims that NMFS should conduct a cumulative impact assessment of all offshore wind surveys and construction projects on marine mammals. Another commenter further notes that "dividing and segmenting the estimated take analysis for Vineyard Wind 1 across two years provides an inaccurate picture of total and cumulative effects" on North Atlantic right whales.

Response: NMFS is required to authorize the requested incidental take of small numbers of marine mammals of a species or stock by U.S. citizens if it finds the total take “while engaging in that (specified) activity” within a specified geographical region will have a negligible impact on such species or stock and, where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). Negligible impact is defined as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effect on annual rates of recruitment or survival” (50 CFR 216.103). Consistent with the preamble of NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used in the negligible impact analysis. Here, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.*, as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors).

The preamble of NMFS’ implementing regulations also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA section 101(a)(5). NMFS considers: (1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis; and (2) reasonably foreseeable cumulative effects under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has reviewed BOEM’s 2021 EIS as part of its inter-agency coordination and determined that the analysis in the 2021 EIS for the Vineyard Wind 1 Offshore Wind Project is sufficient to cover the more limited scope of the remaining construction activities for this project. The EIS addresses cumulative impacts related to the Project and substantially similar activities in similar locations. Cumulative impacts regarding the issuance of an IHA for construction activities planned by Vineyard Wind 1 have been adequately addressed in the adopted EIS that supports NMFS’ determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of the Project on ESA-listed species, including the North Atlantic right whale, were

analyzed in NMFS’ biological opinion issued under section 7 of the ESA following formal inter-agency consultation with the NOAA Greater Atlantic Regional Field Office (GARFO). Following reinitiated consultation on May 23, 2024, GARFO issued a new BiOp that determined that NMFS’ issuance of an IHA for construction activities, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

NMFS disagrees that dividing estimated take analysis for Vineyard Wind 1 across two years provides an inaccurate picture of cumulative effects on North Atlantic right whales. The take authorized in this IHA represents a subset of the take authorized under the 2023 IHA and is based upon the reduced scope of work remaining for the project. As NMFS has determined the 2021 EIS remains appropriate for this analysis, cumulative effects on marine mammal species, including North Atlantic right whales, are taken into account.

Comment 26: Citing to new data in Finneran *et al.* (2023), commenters raise questions about the validity of NMFS’ current noise exposure guidelines for dolphins at frequencies below ~1kHz and how to accurately estimate received noise levels from free-swimming animals. Commenters recommend NMFS conduct a new analysis and enlarge the exclusion and clearance zones for marine mammals, particularly bottlenose dolphins and long finned pilot whales. Commenters also criticize specific facets of the methodology in NMFS 2018 Revised Technical Guidance, suggest the need for additional research, and suggested ongoing construction at Vineyard Wind cease or the IHA be withdrawn until NMFS updated its PTS/TTS thresholds for mid-frequency cetaceans.

Response: NMFS disagrees that the analysis or mitigation zones for marine mammals (and MF species specifically) require adjustments and that the IHA process be paused (or withdrawn) until more information is known on whether animals will move out of the area or NMFS finalizes updates to the 2018 Technical Guidance. Under section 101(a)(5)(D) of the MMPA, NMFS is required to issue the IHA if the taking will be for small numbers of the affected species or stocks and if NMFS is able to make the statutorily required negligible impact finding. Among other things, the IHA must prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat. All of these standards

are based on the best available information.

Our analyses for predicting auditory impacts on marine mammals are based primarily on our 2018 Technical Guidance for Assessing the Impacts of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2018). NMFS is currently in the process of updating that Technical Guidance, following a rigorous process involving external peer review, Federal agency review, and public comment (89 FR 36762, May 3, 2024). As the commenter notes, Finneran *et al.* (2023) suggests that high-frequency cetaceans (formerly classified as mid-frequency cetaceans in our 2018 Revised Technical Guidance) are more susceptible to noise-induced hearing loss below 1 kHz than previously thought, which will likely result in a change in the Technical Guidance. However, given the rigorous review process to update the Technical Guidance is not complete, the future updates are not quantitatively applied to this project. We note, however, potential anticipated changes to the Technical Guidance would not be expected to change the findings that support the issuance of this IHA.

Regarding some of the specific methodological concerns raised by commenters, NMFS disagrees that the use of means and medians is inappropriate or that the methodology should be compared to that used in the calculation of potential biological removal (PBR). The Technical Guidance’s methodology is designed to predict the mostly likely (realistic) outcome using the central tendencies (means/median) associated with the best available science. The intent is not to predict the worst-case-scenario by relying on the lowest limits for every possible step in the methodology (*i.e.*, Technical Guidance is for accurately predicting exposures and not for establishing “safe limits,” where there is limited to no risk). Further, within the development of the criteria, several assumptions were made to address uncertainty, including the amount of threshold shift defining TTS onset (*e.g.*, 6 dB threshold shift, which is the minimum threshold shift clearly larger than any day-to-day or session-to-session variation) and PTS onset (40 dB shift, where there have been no reports of PTS in a marine mammal whose initial behavioral threshold shift was 40 dB or less) and that there is no recovery between intermittent exposures. Regarding the observation that the data upon which the Technical Guidance is based are limited in some ways, we do not disagree, but are nonetheless charged with basing our analyses on the

best available information and have described a reasonable methodology that does so.

Contrary to the commenters' assertions, NMFS has not drawn any conclusions about TTS based on PSO observations and a commenter incorrectly implies that the clearance and shutdown zones in the proposed IHA, including the 160-m zone for dolphins, are intended to avoid TTS. As described in the **Federal Register** notice for the proposed IHA, NMFS does not quantitatively distinguish Level B harassment in the form of direct behavioral disturbance from a disruption of behavioral patterns resulting indirectly from TTS, but, rather, notes that the predicted takes by Level B harassment could include either. Moreover, the distances at which TTS onset is likely are smaller relative to those where behavioral disruption without any TTS is expected. Regarding the comment related to auditory brainstem response (ABR), NMFS disagrees that conclusions in Finneran *et al.* 2023 cast doubt on the NMFS TTS threshold methodology generally for all species. The results of Finneran *et al.* 2023 show that hearing and TTS data, relying on behavioral methodology, cannot be directly compared to measurements using ABR methods. Finneran *et al.* 2023 indicate "Correlation between TTS measured behaviorally and with ABRs was weak (figure 13) and ABR-measured TTS was typically lower and more variable than that measured behaviorally for the same exposure" and later that "In practice, however, ABR measurements in the present study provided only limited value." While we acknowledge the differences in these two methods in predicting TTS onset, especially at lower frequencies, the information does not support the commenters assertion that NMFS analysis needs to change or that mitigation zones must be enlarged, since, as noted above, the analysis already acknowledges that the potential for TTS in the quantified takes by Level B harassment and the mitigation zones are intended to avoid or minimize PTS, not TTS. Finally, the relationship between ABR and behavioral hearing measurements is not relevant to PSO observations of behavior.

Finally, regarding our mitigation under the applicable least practicable adverse impact standard, our proposed IHA notice explains clearance and shutdown zones are intended to avoid or minimize the likelihood of Level A harassment and reduce the severity or likelihood of Level B harassment. Importantly, the size of the clearance and shutdown zones for all marine

mammals is larger than the modeled Level A harassment (PTS) distances which, based on SFV data from the 2023 pile driving season, is an overestimate. Specifically for mid frequency cetaceans, the estimated distance to PTS is 43 m; however, the clearance and shutdown zone is set at 160 m due to presence of the bubble curtain. For the North Atlantic right whale, the distance to the clearance and shutdown zone is independent of both PTS and TTS in that they are any distance by PSOs or within 10 km if acoustically detected.

Comment 27: Multiple commenters urged NMFS to deny the proposed project and/or postpone any offshore wind activities until NMFS determines effects of all offshore wind activities on marine mammals in the region and determines that the recent whale deaths are not related to OSW activities. Similarly, some commenters provided general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development-related activities. A commenter further states that offshore wind construction activities have been linked to marine mammal injury and deafness.

Response: While NMFS acknowledges that offshore wind development activities, including HRG survey effort, have increased in the Atlantic Ocean during the time period of increased whale strandings, there is no scientific evidence that these development activities, such as HRG survey effort and turbine construction, are contributing factors to the strandings. Further, HRG surveys are not part of the specified activity. NMFS does not agree that mortality is an anticipated outcome of these specified activities, and there is no evidence to suggest otherwise, as described below. Further, the proposed IHA (89 FR 31008, April 23, 2024) clearly states that no serious injury and/or mortality was requested by Vineyard Wind 1, is expected, or was proposed to be authorized.

The best available science indicates that the anticipated impacts from pile driving of turbines potentially include temporary avoidance of localized areas, cessation of foraging or communication, TTS, stress, masking, *etc.*, (as described in the Effects of the Specified Activities on Marine Mammals and their Habitat section in the **Federal Register** notice for the proposed IHA). NMFS emphasizes that there is no evidence that noise resulting from offshore wind development would cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing

offshore wind activities (*e.g.*, HRG surveys or construction). The commenters offer no such evidence or other scientific information to substantiate their claim. This point has been well supported by other agencies, including the Marine Mammal Commission (Marine Mammal Commission Newsletter, Spring 2023). Additionally, a recent paper by Thorne and Wiley (2024) reviewed spatiotemporal patterns of strandings, mortalities, and serious injuries of humpback whales along the U.S. East Coast from 2016–2022. Humpback whales were chosen as a case study for this analysis as they are currently undergoing a UME and strand more often than other large whale species. Thorne and Wiley (2024) found vessel strikes to be a major driver in the increase of humpback whale strandings, mortalities, and serious injury along the east coast. The potential for vessel strike increased during the study period due to increased vessel traffic in new foraging areas, the increased presence of juvenile humpback whales, and humpback whale foraging in shallow areas that overlap with vessel traffic. Based upon the spatiotemporal analysis, no evidence was found that offshore wind development played a role in the increased number of strandings over time. Future studies should focus on gaining a greater understanding of spatial and seasonal habitat use patterns of large whales, spatiotemporal changes in prey abundance and distribution, and how habitat use and foraging behavior affect the risk of vessel strike. While several species of delphinids and beaked whales have also stranded off New Jersey since 2011 (per data provided from the National Marine Stranding Network), there is no evidence that the acoustic sources used during HRG surveys contributed to these events. NMFS will continue to gather data to help us determine the cause of death for these stranded whales.

Recently, NMFS was made aware of a media article wherein a member of the public conducted a statistical analysis on the correlation between offshore wind vessel use and whale deaths along the U.S. east coast (Climate Change Dispatch, 2024). The parameters considered in the analysis were limited to offshore wind vessel movement and whale deaths. NMFS has long recognized that marine mammals strandings have increased over the years, including increases in strandings of three large whale species resulting in the declaration of Unusual Mortality Events for minke, humpback, and North

Atlantic right whales in 2018, 2017, and 2017 respectively. Offshore wind development has increased over the same time period, so the correlation was not surprising. However, the analysis presented in the article was not peer-reviewed, was limited, not fully described, does not appear to separate out vessel movement from survey activities, did not consider other known factors that are increasing ship strike risk in general (e.g., Thorne and Wiley, 2024) or other factors leading to increased strandings (e.g., entanglement, climate change), and did not demonstrate that offshore wind vessel traffic or HRG surveys are the cause of strandings. Overall, while NMFS considered this information, it did not provide new information that links whale strandings to offshore wind vessel movement or surveys.

There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016, and we provide further information on the humpback whale and North Atlantic right whale UMEs in the Description of Marine Mammals in the Area of Specified Activities section of this notice. For humpback whales, partial or full necropsy examinations were conducted on approximately half of the whales that were recently stranded along the U.S. East Coast. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (e.g., national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either ship strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage and starvation. For North Atlantic right whales, starting in 2017, evaluated mortalities were documented in both Canada and the United States, with the whales documented for this UME as being dead, injured, and/or sick to the extent that more than 20 percent of the population has been affected. The preliminary cause of mortality, serious injury, and morbidity (sublethal injury and illness) in most of these whales is from entanglements or vessel strikes and human impacts continue to threaten the survival of this species. See NMFS' websites (<https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2024-humpback-whale-unusual-mortality-event-along-atlantic-coast> and <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-north-atlantic-right-whale-unusual-mortality-event>) for more information on the ongoing humpback whale and North Atlantic right whale UMEs. More information about interactions between offshore wind energy projects and whales can be found at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales>.

Comment 28: A commenter indicates that NMFS has not taken new information into account for the presence and behaviors of sperm whales in the proposed Project Area. The commenter further notes that due to high sperm whale presence in the Project Area, as described by Farmer *et al.* (2018) and Westell *et al.* (2024), NMFS should strengthen mitigation measures for sperm whales.

Response: NMFS disagrees that new information to account for the presence and behaviors of sperm whales in the Project Area have not been taken into account. Although Westell *et al.* (2024) acoustically identified sperm whale presence in the lease area during June and July 2020–2021, Vineyard Wind 1 PSO data collected during the 2023 construction campaign during June through December 2023 did not document any sightings of sperm whales in the Lease Area (RPS, 2024). In addition, there is no designated critical habitat or biologically important areas (BIAs) for this species in the vicinity of the LIA. The commenter also references the Farmer *et al.* (2018) study of disturbances to sperm whales, however, that study discusses the Gulf of Mexico stock of sperm whales specifically in the Gulf of Mexico. NMFS has included a robust suite of mitigation measures specific to sperm whales in the IHA, including a 500 m visual pre-start clearance zone, 500 m visual shutdown zone, a 500 m PAM clearance zone, and a 500 m PAM monitoring zone in addition to general mitigation measures regarding soft start, noise attenuation, and seasonal and daily pile driving restrictions. Due to limited documented occurrence during Vineyard Wind 1 activities in the lease area, NMFS does not agree that it is appropriate or warranted to extend mitigation measures for sperm whales.

Comment 29: One commenter claims that the NEPA process for the Vineyard Wind 1 IHA is segmented and that a cumulative EIS should be developed for the RI–MA WEA. The commenter further indicates that a cumulative EIS should include nine lease areas, including the proposed Vineyard Wind 1 Project Area within the WEA.

Response: NMFS' proposed action to issue an IHA to Vineyard Wind constitutes a major Federal action under NEPA. In 2021, after independent review, with specific attention given to its evaluation of effects to marine mammals and their habitat, NMFS adopted BOEM's Vineyard Wind 1 Final Environmental Impact Study (FEIS) to satisfy NMFS' independent NEPA obligations related to its decision under the MMPA of whether or not to issue an IHA to the Vineyard Wind and signed a Record of Decision on May 10, 2021. The FEIS evaluated the direct and indirect impacts of the project as well as the cumulative impacts of all past, present and foreseeable future actions, including full offshore wind build-out of the OCS. Therefore, the cumulative impacts from constructing wind farms in all proposed lease areas, including those in southern New England, is included in the FEIS. BOEM's Vineyard Wind 1 FEIS was challenged and upheld by a court. For these reasons, NMFS disagrees that a separate EIS that considers the nine lease areas in the RI–MA WEA alone is necessary to comply with NEPA for issuance of the IHA.

Comment 30: Commenters suggest that supplemental NEPA is necessary for the proposed action and the Vineyard Wind 1 EIS should be reopened to incorporate this analysis. One commenter recommends that the Vineyard Wind 1 Record of Decision (ROD) and project construction be suspended until a new FEIS is completed. Another commenter claims that the Vineyard Wind 1 ROD is in violation of NEPA as it was completed and approved before the reinitiated Biological Opinion in 2021 and also supported halting construction of the project. An additional commenter claims that supplemental NEPA would be necessary if any larger piles or a greater number (than 15) pile were to be installed and this NEPA should consider any changes to hammer type, hammer size, effects to the substrate, and effects on marine mammals.

Response: NMFS disagrees with commenters that a supplemental NEPA document is necessary for this action or that the FEIS is deficient. The planned completion of pile installation, including reduced scope of work, inclusion of *in situ* SFV data into the analysis, additional mitigation, monitoring, and reporting measures, and updated marine mammal density data, have been reviewed by NMFS to determine if supplementation is

Comment 31: Commenters suggest that supplemental NEPA is necessary for the proposed action and the Vineyard Wind 1 EIS should be reopened to incorporate this analysis. One commenter recommends that the Vineyard Wind 1 Record of Decision (ROD) and project construction be suspended until a new FEIS is completed. Another commenter claims that the Vineyard Wind 1 ROD is in violation of NEPA as it was completed and approved before the reinitiated Biological Opinion in 2021 and also supported halting construction of the project. An additional commenter claims that supplemental NEPA would be necessary if any larger piles or a greater number (than 15) pile were to be installed and this NEPA should consider any changes to hammer type, hammer size, effects to the substrate, and effects on marine mammals.

Response: NMFS disagrees with commenters that a supplemental NEPA document is necessary for this action or that the FEIS is deficient. The planned completion of pile installation, including reduced scope of work, inclusion of *in situ* SFV data into the analysis, additional mitigation, monitoring, and reporting measures, and updated marine mammal density data, have been reviewed by NMFS to determine if supplementation is

warranted. Vineyard Wind 1 has proposed to install the same size of the remaining 15 piles using the same hammer type. Supplementation of the Vineyard Wind 1 EIS is not required because this proposed action does not represent a substantial change to the Project and the proposed changes do not change the impact determinations. Therefore, the changes referenced here do not present significant new circumstances or information relevant to environmental concerns pertaining to the proposed action or its impacts (see 40 CFR 1502.9(d)(1)). NMFS has determined that the Vineyard Wind 1 FEIS is sufficient and a supplemental NEPA document is not necessary.

As the Vineyard Wind 1 FEIS is sufficient for the proposed action and a new FEIS does not need to be prepared, it is not necessary to suspend the ROD or project construction. In addition, the original Biological Opinion was finalized on September 11, 2020, in advance of the Vineyard Wind 1 ROD, finalized on May 10, 2021.

Changes From the Proposed IHA to the Final IHA

The text of several measures in the draft IHA was revised to improve the clarity and consistency of the measures. In addition, reporting requirements on marine mammals have been updated in accordance with Greater Atlantic Regional Fisheries Office (GARFO), Southeast Regional Office (SERO), and the Northeast Fisheries Science Center (NEFSC) most recent guidance. Several other measures were changes from the proposed IHA to the final IHA in consideration of public comments or other information. Changes are summarized here, with additional explanation provided later in the notice, as necessary:

- The requirement for NMFS approval for pile driving in December was removed as a mitigation requirement from the IHA. After the 30-day public comment period on the proposed IHA, Vineyard Wind 1 notified NMFS that pile driving would likely commence in November and continue into December. Therefore, NMFS removed the requirement for Vineyard Wind 1 to obtain prior approval from NMFS to pile drive in December;

- Pilot whales and Risso's dolphins were moved from the 500 m clearance and shutdown zone category to the 160 m clearance and shutdown zone category in the IHA. The distance to the Level A harassment zone for other mid-frequency cetaceans is 43 m, and a 160 m clearance and shutdown zone is sufficient to encompass this zone. In

addition, the clearance and shutdown distance for other mid-frequency delphinids is 160 m. This change was also made to align with the Vineyard Wind 1 original request in the application;

- The timeframe for the use of vessel-based surveys to confirm the clearance zone is clear of North Atlantic right whales prior to pile driving has been extended from the original period of December 1–December 31, described in the proposed IHA notice to the period of November 1–December 31. This change was made to align with the Vineyard Wind 1 original request in the application and to provide increased mitigation during the month of November as well when North Atlantic right whale density begins to increase in the Project area;

- In response to a public comment, NMFS has added a measure to require Vineyard Wind 1 to cease pile driving if there is a live cetacean stranding within 50 km of pile driving activities and the NMFS Marine Mammal Stranding Network is attempting to herd or return animals to the water;

- The IHA measure describing the procedures for Vineyard Wind 1 to implement if any of the SFV measurements exceed the distance expected or modeled to any isopleth of concern was revised in the final IHA for clarity. The examples for a pile being installed with a single bubble curtain and near field sound attenuation device and the example for a double bubble curtain without a near field sound attenuation device were removed as Vineyard Wind 1 would be required to use both a double bubble curtain and near field sound attenuation device. In addition, the requirement for Vineyard Wind 1 to request concurrence from NMFS to proceed with pile driving after providing a written explanation of isopleth exceedance was removed. If any isopleth of concern is exceeded, Vineyard Wind 1 would be required to provide written explanation to NMFS Office of Protected Resources supporting their determination that adjustments to mitigation measures would be sufficient in reducing pile driving noise below the isopleth of concern and implement those measures;

- NMFS updated the SFV requirements in the IHA to align with the Biological Opinion Terms and Conditions;

- The educational requirement for PSOs and PAM operators to receive a bachelor's degree "from an accredited college or university" have been removed, although PSOs and PAM operators are still required to hold a bachelor's degree; and

- The requirement for full PAM detection data to be submitted with monthly reports has been updated due to a change in Northeast Fisheries Science Center reporting requirements. Vineyard Wind 1 must submit full PAM detection data within 90 days after foundation installation ceases and every 90 calendar days for transit lane PAM.

In addition, the following measure was added to the IHA section 5(a) to describe Vineyard Wind 1's obligation if SFV measurements show exceedance of expected Level A harassment or Level B harassment thresholds, including while implementing additional mitigation measures:

- If, after all practicable measures that could be taken to reduce noise levels have been successfully implemented and exhausted, Thorough SFV measurements continue to indicate that the distances to marine mammal Level A harassment thresholds are greater than those modeled assuming 6 dB attenuation and the Level B harassment thresholds based on SFV during the 2023 campaign, Vineyard Wind 1 must meet with NMFS within 3 three business days to discuss: the results of SFV monitoring, the severity of exceedance of distances to identified isopleths of concern, the species affected, modeling assumptions, and whether the SFV results demonstrate the magnitude and degree of impacts from the Project are greater than those considered in this final IHA.

Description of Marine Mammals in the Area of Specified Activities

Thirty-eight marine mammal species, comprising 39 stocks, under NMFS' jurisdiction have geographic ranges overlapping the western North Atlantic OCS (Hayes *et al.*, 2023). However, for reasons described below, Vineyard Wind 1 has requested, and NMFS has authorized, take of only 14 species (comprising 14 stocks) of marine mammals. Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. See **ADDRESSES**. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS'

website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and PBR, where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs; 16 U.S.C. 1362(20)). While no serious injury or mortality is anticipated or authorized, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats. Four of the

marine mammal species for which take is authorized are listed as endangered under the ESA, including the North Atlantic right whale, fin whale, sei whale, and sperm whale.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2023 draft SARs and NMFS' U.S. 2022 SARs. For the majority of species potentially present in the specific geographic region, NMFS has

designated only a single generic stock (e.g., "western North Atlantic") for management purposes. This includes the "Canadian east coast" stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations (i.e., Gulf of Maine and Nova Scotia, respectively). However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the specific geographic region. All values presented in table 1 are the most recent available at the time of publication and are available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.

TABLE 1—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE LIA AND BE TAKEN BY HARASSMENT

Common name ^a	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^b	Stock abundance (CV, N _{min} , most recent abundance survey) ^c	PBR	Annual M/SI ^d
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family <i>Balaenidae</i> : North Atlantic right whale	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	340 (0; 337; 2021) ^e	0.7	17.2
Family <i>Balaenopteridae</i> (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3098, 2021)	6.2	0.6
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	- , - , N	21,968 (0.31, 17,002, 2021) ..	170	9.4
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	- , - , Y	1,396 (0, 1,380, 2016)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family <i>Physeteridae</i> : Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	5,895 (0.29, 4,639, 2021)	9.28	0.2
Family <i>Delphinidae</i> : Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic	- , - , N	39,215 (0.3, 30,627, 2021)	306	5.7
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic Off-shore.	- , - , N	64,587 (0.24, 52,801, 2021) ^g	507	28
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	- , - , N	93,100 (0.56, 59,897, 2021) ..	1,452	414
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	- , - , N	44,067 (0.19, 30,662, 2021) ..	307	18
Atlantic white-sided dolphin.	<i>Lagenorhynchus acutus</i>	Western North Atlantic	- , - , N	93,233 (0.71, 54,443, 2021) ..	544	28
Family <i>Phocoenidae</i> (porpoises): Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy ...	- , - , N	85,765 (0.53, 56,420, 2021) ..	649	145
Order Carnivora—Pinnipedia						
Family <i>Phocidae</i> (earless seals):						
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	- , - , N	61,336 (0.08, 57,637, 2018) ..	1,729	339
Gray seal ^h	<i>Halichoerus grypus</i>	Western North Atlantic	- , - , N	27,911 (0.20, 23,924, 2021) ..	1,512	4,570

^a Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2023)).

^b ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR, or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

^c NMFS 2022 marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance.

^d These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

^e The draft 2023 SAR includes an estimated population (N_{best} 340) based on sighting history through December 2021 (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023).

^f Total annual average observed North Atlantic right whale mortality during the period 2017–2021 was 7.1 animals and annual average observed fishery mortality was 4.6 animals. Numbers presented in this table (27.2 total mortality and 17.6 fishery mortality) are 2016–2020 estimated annual means, accounting for undetected mortality and serious injury.

^g As noted in the draft 2023 SAR (89 FR 5495, January 29, 2024), abundance estimates may include sightings of the coastal form.

^h NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI value given is for the total stock.

As indicated above, all 14 species (with 14 managed stocks) in table 1 temporally and spatially co-occur with the activity to the degree that take is expected to occur. The following species are not expected to occur in the LIA due to their known distributions, preferred habitats, and/or known temporal and spatial occurrences: the blue whale (*Balaenoptera musculus*), northern bottlenose whale (*Hyperoodon ampullatus*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), melon-headed whale (*Peponocephala electra*), dwarf and pygmy sperm whales (*Kogia* spp.), killer whale (*Orcinus orca*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont whale (*Mesoplodon densirostris*, *M. europaeus*, *M. mirus*, and *M. bidens*), Fraser's dolphin (*Lagenodelphis hosei*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), rough-toothed dolphin (*Steno bredanensis*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), short-finned pilot whale (*Globicephala macrorhynchus*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), and hooded seal (*Cryosophora cristata*). None of these species were observed during the 2023 construction season or during previous site assessment/characterization surveys (Vineyard Wind 2018, 2019, 2023a–f). Due to the lack of sightings of these species in the MA WEA (Kenney and Vigness-Raposa, 2010; ESS Group Inc., 2016; Kraus *et al.*, 2016; Vineyard Wind, 2018; 2019; O'Brien *et al.*, 2020; 2021; 2022; 2023; EPI Group, 2021; Palka *et al.*, 2017; 2021; RPS, 2022; Vineyard Wind, 2023a–f; Hayes *et al.*, 2023) as well as documented habitat preferences and distributions, we have determined that each of these species will not be considered further. Furthermore, the northern limit of the northern migratory coastal stock of the common bottlenose dolphin (*Tursiops truncatus*) does not extend as far north as the LIA. Thus, take is only authorized for the offshore stock which may occur within the LIA. Although harp seals (*Pagophilus groenlandicus*) are expected to occur within the WDA, no harp seals were observed by PSOs during the Vineyard Wind 1 site characterization surveys (2016, 2018–2021; ESS Group Inc., 2016; Vineyard Wind 2018; 2019) nor during the 2023 construction campaign (Vineyard Wind, 2023a–f). Thus, Vineyard Wind 1 did not request, and

NMFS is not authorizing, take for this species.

A detailed description of the species likely to be affected by the Project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the proposed IHA notice (89 FR 31008, April 23, 2024). Other than UME updates, we are not aware of any changes in the status of the species and stocks listed in table 1; therefore, detailed descriptions are not provided here. Please refer to the proposed IHA notice for these descriptions (89 FR 31008, April 23, 2024). Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Since the publication of the proposed IHA, the following updates have occurred to the below species in regards to general information or their active UMEs.

North Atlantic Right Whale

As described in the proposed IHA notice, elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be “human interaction,” specifically from entanglements or vessel strikes. Since publication of the proposed IHA, the number of animals considered part of the UME has increased. As of September 5, 2024, there have been 40 confirmed mortalities (dead, stranded, or floaters), 1 pending mortalities, and 35 seriously injured free-swimming whales for a total of 76 whales. The UME also considers animals with sublethal injury or illness (called “morbidity”; n=66) bringing the total number of whales in the UME to 142. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Humpback Whale

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or full necropsy examinations have been conducted on approximately half of the known cases. Since publication of the proposed IHA, the number of animals

considered part of the UME has increased to 227 total mortalities (as of September 5, 2024). More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Minke Whale

Since January 2017, a UME has been declared based on elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina. As of September 5, 2024, a total of 174 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the whales, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019a) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, <i>Cephalorhynchid</i> , <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Exposure to underwater noise from the specified activities has the potential to result in Level A harassment or Level B harassment of marine mammals in the specific geographic region, but no serious injury or mortality. The proposed IHA Federal Register notice (89 FR 31008, April 23, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Project's specified activities on marine mammals and their habitat. While some new literature regarding marine mammal distribution and habitat use has been published since publication of the proposed IHA (*e.g.*, Bellman *et al.*, 2023; Holdman *et al.*, 2023; Meyer-Gutbrod *et al.*, 2023; Roberts *et al.*, 2024; Thorne and Wiley, 2024), there is no new information that NMFS is aware of that changes the analysis in the proposed IHA notice. We provide a summary of these papers below.

Bellmann *et al.* (2023) collected 27 operational noise measurements across 24 offshore wind farms consisting of 16 different WTG types of powers ranging from 2.3 to 8 mega watts (MW). It should be noted that the results from Holme *et al.* (2023) are based on a subset of these data. Similar to Holme *et al.* (2023), Bellmann *et al.* (2023) note that no relationship between nominal WTG power and operational noise was

observed, in contrast with the linear models used by Tougaard *et al.* (2020) and Stöber and Thomsen (2021). It is theorized that this is related to gearless and more modern WTGs measured as well as increased size and weight reducing transmission of vibrations. With regard to the extent of operational noise levels, Bellmann *et al.* (2023) concluded that tonal components of the operational noise are clearly observable at a range of 100 meters, but typically are not resolvable within the prevailing ambient noise at a range of 5 km. However, Bellmann *et al.* (2023) also comment that these measurements were taken within the first year of operation, and that previous experience indicates noise levels will change significantly over time, likely due to wear and tear in gearbox WTGs, but that it is not clear at this time if these changes will also be present in direct-drive systems.

Holdman *et al.* (2023) studied harbor porpoise habitats in the Gulf of Maine (GOM) and Southern New England waters providing baseline data on the occurrence and foraging activity of porpoises from 2020 to 2022. Harbor porpoises were present year-round in the GOM with peak detections in the summer and fall. The observed seasonal pattern of harbor porpoise occurrence in this study is consistent with prior information on the general distribution of the GOM/Bay of Fundy stock (Wingfield *et al.*, 2017; Hayes *et al.*, 2022). In line with previously reported distribution patterns, harbor porpoise occurrence in Southern New England was high in fall, winter and spring, but porpoises were largely absent in the summer. Results from generalized additive models suggest that time of year, hour of day, lunar illumination, and temperature are significant contributors to harbor porpoise presence (detection mainly through echolocation clicks) and/or foraging effort. This study emphasized the importance of early identification of important harbor porpoise habitat to mitigate impacts and

monitor change in the event of overlap between these habitats and areas proposed for offshore wind development.

Meyer-Gutbrod *et al.* (2023) studied North Atlantic right whale sightings from 1990–2018 to examine patterns in monthly habitat use in 12 high-use areas to broadly characterize new seasonal habitat-use patterns across the core North Atlantic right whale range. As North Atlantic right whale foraging habitat selection is driven by complex spatial and temporal patterns (*e.g.*, prey abundance), abundances of *Calanus finmarchicus* (a species of copepod and a component of the zooplankton found in the northern Atlantic Ocean) and *Calanus hyperboreus* (species of copepod found in the Arctic Ocean and northern Atlantic Ocean) were also analyzed for decadal variations in the North Atlantic right whale foraging habitats. The research found that in comparison to the 2000s, the 1990s and the 2010s were similar in that North Atlantic right whale sightings (*i.e.*, Sightings Per Unit Effort (SPUE)) declined in the foraging habitats of the Gulf of Maine and Scotian Shelf during the seasons when abundance of *C. finmarchicus* was relatively low (spring, summer, fall). The drop in sightings is associated with extended duration of habitat use by North Atlantic right whales in Cape Cod Bay into the late spring and increased use of Southern New England waters and the Gulf of St. Lawrence in the spring and summer in the 2010s. Summertime declines in the 2010s for copepod abundances in the traditional foraging habitat (*e.g.*, Gulf of Maine) indicate that the increased use of the Gulf of St. Lawrence in more recent years is driven by a decline in prey in traditional foraging habitats rather than by an increase in prey in the new foraging habitat. Overall, while some patterns in seasonal habitat use remained consistent across all three decades, including the winter migration to the Southeast U.S. calving ground

and early spring foraging in Cape Cod Bay, there were notable differences in the seasonality and persistence of North Atlantic right whales in some foraging habitats across the study period which indicate that the North Atlantic right whale distribution patterns are shifting.

In 2022, the Duke University Marine Geospatial Ecology Laboratory provided updated habitat-based marine mammal density models for the U.S. Atlantic (Roberts *et al.*, 2016; Roberts *et al.*, 2023). The take estimate analysis for the Vineyard Wind 1 IHA incorporates these density models into methodology for estimating take from foundation installation (89 FR 504, January 4, 2024). Recently, North Atlantic right whale density model results were evaluated using independently collected passive acoustic monitoring (PAM data) (Roberts *et al.*, 2024). Positive correlations between North Atlantic right whale densities and acoustic detection rates indicated concurrence between visual and acoustic observations of North Atlantic right whales. Results of this study also further quantify the North Atlantic right whale distribution shifts that occurred in 2010.

Moreover, new data also supports our inclusion of certain mitigation measures in the proposed and this final IHA. For example, Crowe *et al.* (2023) discussed the use and importance of real-time data for detecting North Atlantic right whales. The shift in North Atlantic right whale habitat use motivated the integration of additional ways to detect the presence of North Atlantic right whales, and passive acoustic detections of right whale vocalizations reported in near real-time became an increasingly important tool to supplement visual sightings. The proposed IHA included real-time and daily awareness measures and sighting communication protocols, NMFS evaluated these measures and added details for clarity or updated the reporting mechanisms, such as in the case of sighting an injured North Atlantic right whale. Davis *et al.* (2023) analyzed North Atlantic right whale individual upcalls from 2 years of acoustic recordings in southern New England, which showed that North Atlantic right whales were detected at least 1 day every week throughout both years, with highest North Atlantic right whale presence from October to April. Within Southern New England (SNE), on average, 95 percent of the time North Atlantic right whales persisted for 10 days, and recurred again within 11 days. An evaluation of the time period over which it is most effective to monitor prior to commencing pile driving activities showed that with 1 hour of pre-construction monitoring there was

only 4 percent likelihood of hearing a North Atlantic right whale, compared to a 74 percent likelihood at 18 hours. Therefore, monitoring for at least 24 h prior to activity will increase the likelihood of detecting an up-calling North Atlantic right whale.

Overall, there is no new scientific information regarding the general anticipated effects of offshore wind construction on marine mammals and their habitat that was not discussed in the proposed IHA. The information and analysis regarding the potential effects on marine mammals and their habitat included in the proposed IHA **Federal Register** notice is referenced and used for this final IHA notice and is not repeated here; please refer to the proposed IHA **Federal Register** notice (89 FR 31008, April 23, 2024).

Globally, there are more than 341,000 operating WTGs (Global Wind Energy Council). Turbine failures are known to occur but are considered rare events (Katsprakis *et al.*, 2021, DOE, 2024a). For example, fewer than 40 incidents were identified in the modern fleet of more than 40,000 onshore turbines installed in the United States as of 2014 (DOE, 2024b). In 2022, the total global capacity of offshore wind reached 59,009 MW from 292 operating projects and over 11,900 operating wind turbines in 2022 (DOE, 2023), and a review of the relevant literature and media reports indicate blade failure among this cohort of turbines continues to be rare, consistent with industry performance in onshore wind turbines. On July 13, 2024, however, a blade on one of the WTGs at Vineyard Wind 1 was damaged during the “warm up” phase of operations, causing a portion of the blade, primarily composed of fiberglass, to fall into the water. In cooperation with Vineyard Wind 1, GE Vernova, the blade manufacturer, initiated debris recovery efforts and an investigation. Following this blade failure incident, the Bureau of Safety and Environmental Enforcement (BSEE), Department of Interior, issued a Suspension Order on July 17, 2024 (<https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-statement-on-vineyard-wind>) and an additional Order for clarification on July 26, 2024 (<https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-issues-new-order-to-vineyard-wind>), which suspends power production and any further wind turbine generator construction until the suspension is lifted. GE Vernova has preliminarily identified a defect in the manufacturing process, specifically insufficient bonding, of this particular blade that the quality assurance program

should have identified. On August 9, 2024, Vineyard Wind and GE Vernova released an action plan that outlines the steps necessary to remove the remainder of the damaged blade, continue debris cleanup response efforts, and resume turbine installation and operations of the project. The plan specifies that no blades will be installed or used in operation until each is inspected. In addition, GE has developed and will implement real-time monitoring technology to monitor blades during operations to avoid this type of incident from occurring in the future.

As noted above, wind turbine failure is considered rare, and NMFS still considers the likelihood that blade failure would occur pursuant to Vineyard Wind 1’s specified activity during the effective period of the IHA so low as to be discountable. Furthermore, GE Vernova’s quality assurance program will complete thorough inspections on the remaining blades to be installed to ensure additional blade malfunction incidents do not occur. Vineyard Wind 1 did not request, NMFS does not anticipate, and NMFS has not authorized, take of marine mammals incidental to a turbine blade failure and, therefore the topic is not discussed further.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform NMFS’ consideration of “small numbers” and the negligible impact determinations (impacts on subsistence uses is not relevant here).

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise from pile driving has the potential to result in disruption of marine mammal behavioral patterns. Impacts such as masking and TTS can contribute to the disruption of behavioral patterns and are accounted for within those authorized takes. There is also some potential for high frequency species (harbor porpoise) and phocids (harbor

seal and gray seal) to experience a limited amount of auditory injury (PTS; Level A harassment) primarily because predicted auditory injury zones are large enough and these species are cryptic enough that the potential for PTS cannot be fully discounted or mitigated. For mysticetes, the Level A harassment ER95_{percent} ranges are also large (0.043 km to 3.191 km); however, the extensive marine mammal mitigation and monitoring planned by Vineyard Wind 1 and required by NMFS, as well as natural avoidance behaviors is expected to reduce the potential for PTS to discountable levels. Nevertheless, Vineyard Wind 1 has requested, and NMFS has authorized a small amount of Level A harassment incidental to installing piles (table 11). Auditory injury is unlikely to occur for mid-frequency species as thresholds are higher and PTS zones are very close to the pile, such that PTS is unlikely to occur. While NMFS has authorized Level A harassment and Level B harassment, the planned mitigation and monitoring measures are expected to avoid or minimize overall the taking to the extent practicable (see Mitigation and Monitoring and Reporting).

As described previously, no serious injury or mortality is anticipated or authorized incidental to the specified activity. Even without mitigation, pile driving activities are unlikely to directly cause marine mammal mortality or serious injury. There is no documented case wherein pile driving resulted in marine mammal mortality or stranding and the scientific literature demonstrates that the most likely behavioral response to pile driving (or similar stimulus source) is avoidance and temporary cessation of behaviors such as foraging or socialization (see Avoidance and Displacement in Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the proposed IHA **Federal Register** notice (89 FR 31008, April 23, 2024). While in general there is a low probability that mortality or serious injury of marine mammals could occur from vessel strikes, the mitigation and monitoring measures contained within this IHA are expected to avoid vessel strikes (see Mitigation section). No other activities have the potential to result in mortality or serious injury.

For acoustic impacts, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the

density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

As described below, there are multiple methods available to estimate the density or number of a given species in the area appropriate to inform the take estimate. For each species and activity, the largest value resulting from the three take estimation methods described below (*i.e.*, density-based, PSO-based, or mean group size) was carried forward as the amount of take authorized by Level B harassment. The amount of take authorized by Level A harassment reflects the density-based exposure estimates and, for some species and activities, consideration of other data such as mean group size.

Below, we describe NMFS' acoustic thresholds, acoustic and exposure modeling methodologies, marine mammal density calculation methodology, occurrence information, and the modeling and methodologies applied to estimate take for the Project's planned construction activities. NMFS considered all information and analysis presented by Vineyard Wind, as well as all other applicable information and, based on the best available science, concurs that the estimates of the types and amounts of take for each species and stock are reasonable, and has authorized the amount requested. NMFS notes the take estimates described herein for foundation installation can be considered conservative because the estimates do not reflect the implementation of clearance and shutdown zones for any marine mammal species or stock.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals are likely to be behaviorally harassed (Level B harassment) or to incur PTS of some degree (Level A harassment). A summary of all NMFS' thresholds can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from

anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source, ambient noise, and the receiving animal's hearing, motivation, experience, demography, behavior at time of exposure, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment.

NMFS generally predicts that marine mammals are likely to be taken in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above RMS SPL of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these thresholds are expected to include any likely takes by TTS as, in most cases the likelihood of TTS occurs at closer distances from the source. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Project's planned construction activities include the use of impulsive sources (*e.g.*, impact pile driving), and therefore the 160-dB re 1 μ Pa (rms) threshold is applicable to our analysis.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0, Technical Guidance) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). As described above, the Vineyard Wind 1 planned activities include the use of impulsive sources.

NMFS' thresholds identifying the onset of PTS are provided in table 3. The references, analysis, and methodology used in the development of the

thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal->

protection/marine-mammal-acoustic-technical-guidance.

TABLE 3—PERMANENT THRESHOLD SHIFT (PTS) ONSET THRESHOLDS
[NMFS, 2018]

Hearing group	PTS onset thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0-pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	$L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{p,0-pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	$L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0-pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	$L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0-pk,flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	$L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0-pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	$L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Below, we describe the assumptions and methodologies used to estimate take, in consideration of acoustic thresholds and appropriate marine mammals density and occurrence information, for WTG monopile installation. Resulting distances to thresholds, densities and occurrence (*i.e.*, PSO sightings, group size) data used, exposure estimates (as relevant to the analysis), and activity-specific take estimates can be found below.

Acoustic and Exposure Modeling

During the 2023 Vineyard Wind 1 pile installation activities, Vineyard Wind 1 conducted a SFV study to compare with model results of the 2018 modeling (Küsel *et al.*, 2024). The SFV study included acoustic monitoring of the impact installation of 12 monopile foundations from June 6 through September 7, 2023. Five of the 12 acoustically monitored monopiles were determined to be representative of the noise attenuation system (NAS) configuration and maintenance

schedule that would be proposed for the remaining 15 monopiles to be installed in 2024. These five representative monopiles (piles 7, 8, 10, 11, and 12 in the Vineyard Wind 1 SFV Monitoring Report) were monitored using a DBBC and Hydrosound Damper System (HSD), which Vineyard Wind 1 will be required to use for use as the noise attenuation system setup for the remaining 15 monopiles. Vineyard Wind 1 also followed an enhanced bubble curtain maintenance schedule for these 5 monopiles; this maintenance schedule will be used for the remaining 15 monopiles to be installed under this IHA (see the Vineyard Wind 1 Enhanced Big Bubble Curtain (BBC) Technical Memo). Peak (pk), SEL, and RMS SPL received distances for each acoustically monitored pile are reported in the VW1 SFV Final Report Appendix A (Küsel *et al.*, 2024). For additional details on how acoustic ranges were derived from SFV measurements, see the VW1 SFV Final Report sections 2.3 and 3.3 (Küsel *et al.*, 2024). JASCO modeled a maximum

range to the Level A harassment threshold of 3.191 km (1.99 mi) with 6 dB attenuation (for low-frequency cetaceans) (Küsel *et al.*, 2024).

In addition to the 15 piles being installed under the same noise attenuation scenario as the 5 aforementioned representative piles, they are also anticipated to be installed under similar pile driving specifications and in a similar acoustic environment. Table 4 describes the key piling assumptions and planned impact pile driving schedule for 2024. These assumptions and schedule are based upon the 2023 piling and hammer energy schedule for installing monopiles. Vineyard Wind 1 expects installation of the 15 remaining piles will necessitate similar operations. Further, as described in detail in section 6.1 of the Vineyard Wind 1 application, the water depth and bottom type are similar throughout the Lease Area and therefore sound propagation in the LIA is not expected to differ from where the SFV data were collected in 2023.

TABLE 4—KEY PILING ASSUMPTIONS AND HAMMER ENERGY SCHEDULE FOR MONOPILE INSTALLATION

Pile type	Project component	Max hammer energy rating (kJ)	Number of hammer strikes	Max piling time duration per pile (min)	Number piles/day
9.6-m monopile	WTG	4,000	2,884–4,329 (average 3,463) ^a	117	1

^a The number of hammer strikes represents the range of strikes needed to install the 12 monopiles for which SFV was conducted in 2023.

Vineyard Wind 1 compared the acoustic ranges to the Level A harassment and Level B harassment

thresholds derived from the 2018 acoustic modeling (Pyć *et al.*, 2018) to the maximum ranges with absorption

for the five representative monopiles acoustically monitored in 2023. They applied the greater results to the

analysis in their application and NMFS has included that approach in this IHA. The maximum measured range to PTS thresholds of the five representative monopiles was less than the maximum 2018 modeled ranges for all hearing

groups assuming 6 dB attenuation (table 5) (with the exception of high-frequency cetaceans, although Vineyard Wind 1 attributes this extended range to non-piling noise (Vineyard Wind 1, 2023)). Therefore, Vineyard Wind 1 based the

expected distance to the Level A harassment threshold and associated estimated take analysis on the 2018 modeled data.

TABLE 5—MODELED AND MEASURED RANGES TO SEL_{cum} PTS THRESHOLDS FOR MARINE MAMMAL HEARING GROUPS

Marine mammal hearing group	Modeled range to SEL _{cum} PTS threshold (km) ^a	Measured maximum range to SEL _{cum} PTS threshold (km) ^b
Low-frequency cetaceans	3.191	2.370
Mid-frequency cetaceans	0.043	0.010
High-frequency cetaceans	0.071	0.200
Phocid pinnipeds	0.153	0.100

^a Based upon modeling conducted for the 2023 IHA (Pyc *et al.*, 2018).
^b Based upon the five representative monopiles from the Vineyard Wind 1 2023 construction campaign (Küsel *et al.*, 2024).

The maximum range with absorption to the Level B harassment threshold for acoustically monitored piles was 5.72 km (3.6 mi) (pile 13, AU–38; Küsel *et al.*, 2024), which was greater than the 2018 modeled distance to the Level B harassment threshold of 4.1 km (2.5 mi) (Pyc *et al.* 2018). Therefore, Vineyard Wind 1 based the expected distance to the Level B harassment threshold for this IHA and associated estimated take analysis on the 5.72 km acoustically monitored distance.

In 2018, Vineyard Wind 1 conducted animal modeling to estimate take, by Level A harassment (PTS), incidental to the project. In order to best evaluate the SEL_{cum} harassment thresholds for PTS, it is necessary to consider animal movement, as the results are based on how sound moves through the environment between the source and the receiver. Applying animal movement and behavior within the modeled noise fields provides the exposure range, which allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations (note that in all cases the distance to the peak threshold is less than the SEL-based threshold). As described above, Vineyard Wind 1 based the Level A harassment estimated take analysis on the modeled Level A harassment acoustic ranges and therefore appropriately used the results of the JASCO’s Animal Simulation Model Including Noise Exposure (JASMINE) animal movement modeling conducted for the 2023 IHA (86 FR 33810, June 25, 2021). Sound exposure models like JASMINE use simulated animals (also known as “animats”) to forecast behaviors of animals in new situations and locations based upon previously documented behaviors of those animals.

The predicted 3D sound fields (*i.e.*, the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation. The precise locations of animats and their pathways are not known prior to a project; therefore, a repeated random sampling technique (*i.e.*, Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The combined exposure history of all animats gives a probability density function of exposure during the Project.

Since the time that the JASMINE animal movement modeling was conducted for the 2023 IHA (86 FR 33810, June 25, 2021), no new behavior data is available that would have changed how animats move in time and space in that model and, therefore, NMFS has determined that the JASMINE outputs from the 2018 modeling effort are reasonable for application here. However, the post processing calculations used more recent density data (table 6). The mean number of modeled animats exposed per day with installation of one 9.6–m monopile were scaled by the maximum monthly density for the LIA (Roberts *et al.*, 2023) for each species (table 6) to estimate the real-world number of animats of each species that could be exposed per day in the LIA. This real-world number of animals was multiplied by the expected number of days of pile installation (15 days) to derive a total take estimate by Level A harassment for each species. The number of potential exposures by Level A harassment was estimated for each species using the following equation: Density-based exposure estimate_{Level A harassment} = number of animats

exposed above the Level A harassment threshold × ((mean maximum monthly density (animals/km²)/modeled 2018 density (animats/km²)) × number of days (15)).

To estimate the amount of take by Level B harassment incidental to installing the remaining 15 piles, Vineyard Wind 1 applied a static method (*i.e.*, did not conduct animal movement modeling). Vineyard Wind 1 calculated the Level B harassment ensonified area using the following equation:
$$A = \pi r^2,$$
where *A* is equal to the ensonified area and *r* is equal to the radial distance to the Level B harassment threshold from the pile driving source (*r*_{Level B harassment} = 5.72 km).

The ensonified area (102.7 km²) was multiplied by the mean maximum monthly density estimate (table 8) and expected number of days of pile driving (15 days) to determine a density-based take estimate for each species. The number of potential exposures by Level B harassment was estimated for each species using the following equation: Density-based exposure estimate_{Level B harassment} = ensonified area (km²) × maximum mean monthly density estimate (animals/km²) × number of days (15).

Density and Occurrence and Take Estimation

In this section we provide information about marine mammal density, presence, and group dynamics that informed the take calculations for the planned activities. Vineyard Wind applied the 2022 Duke University Marine Geospatial Ecology Laboratory Habitat-based Marine Mammal Density Models for the U.S. Atlantic (Duke

Model-Roberts *et al.*, 2016; Roberts *et al.*, 2023) to estimate take from foundation installation. The models estimate absolute density (individuals/km²) by statistically correlating sightings reported on shipboard and aerial surveys with oceanographic conditions. For most marine mammal species, densities are provided on a monthly basis. Where monthly densities are not available (*e.g.*, pilot whales), annual densities are provided. Moreover, some species are represented as guilds (*e.g.*, seals (representing *Phocidae spp.*, primarily harbor and gray seals and pilot whales (representing short-finned and long-finned pilot whales))).

The Duke habitat-based density models delineate species' density into 5 * 5 km (3.1 * 3.1 mi) grid cells. Vineyard Wind 1 calculated mean monthly densities by using a 10-km buffered polygon around the remaining WTG foundations to be installed and overlaying this buffered polygon on the density maps. The 10-km buffer defines the area around the LIA used to calculate mean species density. Mean monthly density for each species was determined by calculating the unweighted mean of all 5x5 km grid cells (partially or fully) within the

buffered polygon. The unweighted mean refers to using the entire 5 km x 5 km (3.1 mi x 3.1 mi) grid cell for each cell used in the analysis, and was not weighted by the proportion of the cell overlapping with the density perimeter if the entire grid cell was not entirely within the buffer zone polygon.

Vineyard Wind 1 calculated densities for each month, except for species for which annual density data only was available (*e.g.*, long-finned pilot whale). Vineyard Wind 1 used maximum monthly density from June to December for density-based calculations.

The density models (Roberts *et al.*, 2023) provided density for pilot whales and seals as guilds. Based upon habitat and ranging patterns (Hayes *et al.*, 2023), all pilot whales occurring in the LIA are expected to be long-finned pilot whales. Therefore, all pilot whale density estimates are assumed to represent long-finned pilot whales. Seal guild density was divided into species-specific densities based upon the proportions of each species observed by PSOs during 2016 and 2018–2021 site characterizations surveys within SNE (ESS Group, 2016; Vineyard Wind 2018, 2019, 2023a–f). Of the 181 seals identified to species and sighted within the WDA, 162 were gray seals and 19

were harbor seals. The equation below shows how the proportion of each seal species sighted was calculated to compute density for seals.

$$P_{\text{seal species}} = N_{\text{seal species}} / \text{Number}_{\text{total seals identified}}$$

where *P* represents density and *N* represents number of seals.

These calculations resulted in proportions of 0.895 for gray seals and 0.105 for harbor seals. The proportion for each species was then multiplied by the maximum monthly density for the seal guild (table 6) to determine the species-specific densities used in take calculations.

The density models (Roberts *et al.*, 2023) also do not distinguish between bottlenose dolphin stocks and only provide densities for bottlenose dolphins as a species. However, as described above, based upon ranging patterns (Hayes *et al.*, 2023), only the Western North Atlantic offshore stock of bottlenose dolphins is expected to occur in the LIA. Therefore, it is expected that the bottlenose dolphin density estimate is entirely representative of this stock. Maximum mean monthly density estimates and month of the maximum estimate are provided in table 6 below.

TABLE 6—MAXIMUM MEAN MONTHLY MARINE MAMMAL DENSITY ESTIMATES (ANIMALS per km²) CONSIDERING A 10-km BUFFER AROUND THE LIMITED INSTALLATION AREA

Species	Maximum mean density	Maximum density month
North Atlantic right whale *	0.0043	December.
Fin whale *	0.0036	July.
Humpback whale	0.0022	June.
Minke whale	0.0180	June.
Sei whale *	0.0008	November.
Sperm whale *	0.0008	September.
Atlantic white-sided dolphin	0.0204	June.
Bottlenose dolphin ^a	0.008	August.
Common dolphin	0.1467	September.
Long-finned pilot whale ^b	0.001	N/A.
Risso's dolphin	0.0013	December.
Harbor porpoise	0.0713	December.
Seals (gray and harbor) ^c	0.1745	May.

Note: * denotes species listed under the Endangered Species Act.

^a Density estimate represents the Northwestern Atlantic offshore stock of bottlenose dolphins.

^b Only annual densities were available for the pilot whale guild.

^c Gray and harbor seals represented as a guild.

For some species, PSO survey and construction data for SNE (ESS Group, 2016; Vineyard Wind, 2018, 2019, 2023a–f) and mean group size data compiled from the AMAPPS (Palka *et al.*, 2017; 2021) indicate that the density-based exposure estimates may be insufficient to account for the number of individuals of a species that may be encountered during the planned activities. Hence, local PSO and AMAPPS data were considered to

ensure the potential for take is adequately assessed.

In cases where the density-based Level B harassment exposure estimate for a species was less than the mean group size-based exposure estimate, the take request was increased to the mean group size (in some cases multiple groups were assumed) and rounded to the nearest integer (table 7). For all cetaceans, with the exception of North Atlantic right whales, Vineyard Wind 1

used the mean of the spring, summer, and fall AMAPPS group sizes for each species for the Rhode Island/Massachusetts Wind Energy Area (RI/MA WEA) as shown in tables 2–2, 2–3, and 2–4 in Palka *et al.* (2021) appendix III. These seasons were selected as they would represent the time period in which pile driving activities would take place. Mean group sizes for cetacean species derived from RI/WEA AMAPPS data is shown below in table 7.

However, North Atlantic right whale seasonal group sizes for the RI/MA WEA were not available through the AMAPPS dataset (Palka *et al.*, 2021). Vineyard Wind 1 calculated mean group size for North Atlantic right whales using data from the northeast (NE) shipboard surveys as provided in table 6–5 of Palka *et al.* (2021). Vineyard Wind 1 calculated mean group size by dividing the number of individual right whales sighted (four) by the number of right whale groups (two) (Palka *et al.*, 2021). The NE shipboard surveys were conducted during summer (June 1

through August 31) and fall (September 1 through November 30) seasons (Palka *et al.*, 2021).

For seals, mean group size data was also not available for the RI/MA WEA through AMAPPS (Palka *et al.*, 2021). Vineyard Wind 1 used 2010–2013 AMAPPS NE shipboard and aerial survey at-sea seal sightings for gray and harbor seals, as well as unidentified seal sightings from spring, summer, and fall to calculate mean group size for gray and harbor seals (table 19–1, Palka *et al.*, 2017). To calculate mean group size for seals, Vineyard Wind 1 divided the total

number of animals sighted by the total number of sightings. As the majority of the sightings were not identified to species, Vineyard Wind 1 calculated a single group size for all seal species (table 7).

Additional detail regarding the density and occurrence as well as the assumptions and methodology used to estimate take is included below and in section 6.2 of the incidental take authorization (ITA) application. Mean group sizes used in take estimates, where applicable, for all activities are provided in table 7.

TABLE 7—MEAN MARINE MAMMAL GROUP SIZES USED IN TAKE ESTIMATE CALCULATIONS

Species	Mean group size	Source
North Atlantic right whale *	2	Table 6–5 of Palka <i>et al.</i> 2021.
Fin whale *	1.2	Palka <i>et al.</i> 2021.
Humpback whale	1.2	Palka <i>et al.</i> 2021.
Minke whale	1.4	Palka <i>et al.</i> 2021.
Sei whale *	1	Palka <i>et al.</i> 2021.
Sperm whale *	2	Palka <i>et al.</i> 2021.
Atlantic white-sided dolphin	21.7	Palka <i>et al.</i> 2021.
Bottlenose dolphin	11.7	Palka <i>et al.</i> 2021.
Common dolphin	30.8	Palka <i>et al.</i> 2021.
Long-finned pilot whale	12.3	Palka <i>et al.</i> 2021.
Risso's dolphin	1.8	Palka <i>et al.</i> 2021.
Harbor porpoise	2.9	Palka <i>et al.</i> 2021.
Seals (gray and harbor)	1.4	Table 19–1 of Palka <i>et al.</i> 2017.

Note: * denotes species listed under the Endangered Species Act.

Vineyard Wind 1 also looked at PSO survey data (June through October 2023) in the LIA collected during Vineyard Wind 1 construction activities and calculated a daily sighting rate for species to compare with density-based take estimates and average group size estimates from AMAPPS (table 7). The number of animals of each species sighted from all survey vessels with active PSOs was divided by the sum of all PSO monitoring days (77 days) to

calculate the mean number of animals of each species sighted (see table 11 in the ITA application). However, for each species, the PSO data-based exposure estimate was less than the density-based exposure estimate (see table 14 in the ITA application) and, therefore, density-based exposure estimates were not adjusted according to PSO data-based exposure estimates.

Here we present the amount of take requested by Vineyard Wind 1 and

authorized by NMFS. To estimate take, Vineyard Wind 1 used the pile installation construction schedule shown in table 4, assuming 15 total days of monopile installation. NMFS has reviewed these methods to estimate take and agrees with this approach. The authorized take numbers in table 9 appropriately consider SFV measurements collected in 2023 and represent the maximum amount of take that is reasonably expected to occur.

TABLE 8—MODELED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ACOUSTIC EXPOSURE ESTIMATES

Species	Density-based exposure estimate	
	Level A harassment	Level B harassment
North Atlantic right whale * ^a	0.503	6.6
Fin whale *	0.598	5.5
Humpback whale	1.11	3.4
Minke whale	0.372	27.7
Sei whale *	0.144	1.2
Sperm whale *	0	1.2
Atlantic white-sided dolphin	0	31.4
Bottlenose dolphin	0	12.3
Common dolphin	0	226.0
Long-finned pilot whale	0	1.5
Risso's dolphin	0	2.00
Harbor porpoise	2.758	109.8
Gray Seal	0	240.8
Harbor seal	0.028	28.2

Note: * denotes species listed under the Endangered Species Act.

^a Although modeling shows a very low but non-zero exposure estimate for take by Level A harassment, mitigation measures will be applied to ensure there is no take by Level A harassment of this species.

TABLE 9—AUTHORIZED TAKES (BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT)

Species	NMFS stock abundance	Authorized take by Level A harassment	Authorized take by Level B harassment	Total authorized take	Percent of stock abundance
North Atlantic right whale * ^a	338	0	7	7	2.07
Fin whale *	6,802	1	6	7	0.10
Humpback whale	1,396	2	4	6	0.43
Minke whale	21,968	1	28	29	0.13
Sei whale *	6,292	1	2	3	0.05
Sperm whale *	4,349	0	2	2	0.05
Atlantic white-sided dolphin	93,233	0	32	32	0.03
Bottlenose dolphin	62,851	0	13	13	0.02
Common dolphin ^{b,c}	172,974	0	462	462	0.27
Long-finned pilot whale ^b	39,215	0	13	13	0.03
Risso's dolphin	35,215	0	2	2	0.001
Harbor porpoise	95,543	3	110	113	0.19
Gray Seal	27,300	0	241	241	0.88
Harbor seal	61,336	1	29	30	0.05

Note: * denotes species listed under the Endangered Species Act.

^a Although modeling shows a very low but non-zero exposure estimate for take by Level A harassment, mitigation measures will be applied to ensure there is no take by Level A harassment of this species.

^b Authorized take by Level B harassment adjusted according to mean group size.

^c Authorized take by Level B harassment is based upon the assumption that one group of common dolphins (30.8 dolphins; see table 7) would be encountered per each of the 15 days of pile driving.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to effect the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the

likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

For a fuller discussion of the least practicable adverse impact standard, see 89 FR 31488, 31517 (April 24, 2024; NMFS' final rule for Taking and Importing Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico).

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (e.g., soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the planned construction activities would occur offshore. In addition, several measures in this IHA (i.e., seasonal restrictions, vessel strike avoidance, and clearance and shutdown zones) are more rigorous than measures previously incorporated into the 2023 IHA.

Generally speaking, the mitigation measures considered and required here fall into three categories: temporal (seasonal and daily) work restrictions, real-time measures (shutdown, clearance, and vessel strike avoidance), and noise attenuation/reduction measures. Seasonal work restrictions are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or

make impacts more likely, in order to reduce both the number and severity of potential takes, and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (e.g., once animals are detected within an impact zone). Noise attenuation measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts as well as the contribution to aggregate and cumulative noise that may result in longer-term chronic impacts. Below, we also describe the required training, coordination, and vessel strike avoidance measures that apply to foundation installation and vessel use.

Training and Coordination

NMFS requires all Vineyard Wind's employees and contractors conducting activities on the water, including, but not limited to, all vessel captains and crew, to be trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Vineyard Wind 1 compliance with the IHA. Additionally, all relevant personnel and the marine mammal species monitoring team(s) are required to participate in joint, onboard briefings prior to the beginning of project activities. The briefing must be repeated whenever new relevant personnel (e.g., new PSOs, construction contractors,

relevant crew) join the project before work commences. During this training, Vineyard Wind 1 is required to instruct all project personnel regarding the authority of the marine mammal monitoring team(s). For example, pile driving personnel are required to immediately comply with any call for a delay or shut down by the Lead PSO. Any disagreement between the Lead PSO and the project personnel must only be discussed after delay or shutdown has occurred. In particular, all captains and vessel crew must be trained in marine mammal detection and vessel strike avoidance measures to ensure marine mammals are not struck by any project or project-related vessel.

Prior to the start of in-water construction activities, Vineyard Wind 1 will conduct training for construction and vessel personnel and the marine mammal monitoring team (PSO and PAM operators) to explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). A description of the training program must be provided to NMFS at least 60 days prior to the initial training before in-water activities begin. Vineyard Wind 1 will provide confirmation of all required training documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating project activities.

North Atlantic Right Whale Awareness Monitoring

Vineyard Wind must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, U.S. Coast Guard very high-frequency (VHF) Channel 16, WhaleAlert, and the PAM system throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (e.g., establishment of zones identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and PAM efforts and opportunities (outside of Vineyard Wind 1 efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales. The vessel strike avoidance measures apply to all vessels associated with the

Project within U.S. waters and on the high seas.

Vessel Strike Avoidance Measures

This final IHA contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, it is one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, the IHA contains enhanced mitigation and monitoring measures to avoid vessel strikes, to the extent practicable. While many of these measures are proactive, intending to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a project personnel sights a marine mammal. Vineyard Wind 1 is required to comply with these measures except under circumstances when doing so would create an imminent and serious threat to a person or vessel or to the extent that a vessel is unable to maneuver and, because of the inability to maneuver, the vessel cannot comply.

While underway, Vineyard Wind 1 is required to monitor for and maintain a safe distance from marine mammals, and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (i.e., PSO or trained crew member) must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course as appropriate to avoid striking any marine mammal. The dedicated visual observer, equipped with suitable monitoring technology (e.g., binoculars, night vision devices), must be located at an appropriate vantage point for ensuring vessels are maintaining required vessel separation distances from marine mammals (e.g., 500 m from North Atlantic right whales).

For all project-related vessels, regardless of size, the vessel operator is required to immediately reduce speeds to 10 kn (11.5 mph) or less if any large whale, mother/calf pair, or large assemblage of non-delphinid cetaceans are observed within 500 m of the vessel. Additionally, all project vessels, regardless of size, must maintain a 500-m minimum separation zone from North Atlantic right whales, and a 100-m minimum separation zone from sperm whales and non-North Atlantic right whale baleen species. Vessels are also required to keep a minimum separation distance of 50 m from all delphinid cetaceans and pinnipeds, with an exception made for those species that

approach the vessel (i.e., bow-riding dolphins) (table 10). All reasonable steps must be taken to not violate minimum separation distances. If any of these species are sighted within their respective minimum separation zone, the underway vessel must shift its engine to neutral (if it is safe to do so) and turn away from the animal(s). The engines must not be engaged until the animal(s) have been observed to be outside of the vessel's path and beyond 100 m (for sperm whales and non-North Atlantic right whale large whales) or 50 m (for delphinids and pinnipeds).

If any North Atlantic right whales are sighted at any distance by any project personnel or acoustically detected, project vessels must reduce speeds to 10 kn (11.5 mph) and turn away from the animal. Additionally, if any large whale (other than a North Atlantic right whale) is sighted within 500 m of an underway vessel by project personnel, the vessel is required to immediately reduce speeds to 10 kn (11.5 mph) or less and turn away from the animal.

All of the Project-related vessels are required to comply with the measures within this IHA for operating vessels around North Atlantic right whales and other marine mammals, as well as any existing NMFS vessel speed restrictions in effect for North Atlantic right whales (see 50 CFR 224.105). When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn (11.5 mph), in addition to the required dedicated visual observer, Vineyard Wind 1 is required to monitor the transit corridor, defined as from a port to the lease area or return, in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence in the Project Area, vessel operators, crew members, and the marine mammal monitoring team will monitor U.S. Coast Guard VHF Channel 16, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any North Atlantic right whale or large whale detection will be immediately communicated to PSOs, PAM operators, and all vessel captains. All vessels will be equipped with a properly installed, operational AIS and Vineyard Wind 1 must report all MMSI numbers to NMFS Office of Protected Resources prior to initiating in-water activities. Vineyard Wind 1 must submit a Marine Mammal Vessel Strike Avoidance Plan that must be approved by NMFS prior to commencement of vessel use, and Vineyard Wind 1 must abide by this plan.

Compliance with these measures will reduce the likelihood of vessel strike to the extent practicable. These measures

increase awareness of marine mammals in the vicinity of project vessels and require project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source, *e.g.*, RWSAS) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective,

feasible options available to reduce the likelihood of and effects from a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber,

2013; Van der Hoop *et al.*, 2014; Martin *et al.*, 2015; Crum *et al.*, 2019).

Given the inherent low probability of vessel strike, combined with the vessel strike avoidance measures included herein, NMFS considers the potential for vessel strike to be unlikely and does not authorize take from this activity under this IHA.

TABLE 10—VESSEL STRIKE AVOIDANCE SEPARATION ZONES

Marine mammal species	Vessel separation zone (m)
North Atlantic right whale	500
Other ESA-listed species and non-North Atlantic right whale large whales	100
Other marine mammals ^a	50

^a With the exception of seals and delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*, as described below.

Seasonal and Daily Restrictions

Temporal restrictions in places where marine mammals are concentrated, engaged in biologically important behaviors, and/or present in sensitive life stages are effective measures for reducing the magnitude and severity of human impacts. The temporal restrictions described here are built around North Atlantic right whale protection. Based upon the best scientific information available (Roberts *et al.*, 2023), the highest densities of North Atlantic right whales in the specific geographic region are expected during the months of January through May, with an increase in density starting in December. However, North Atlantic right whales may be present in the LIA throughout the year.

NMFS is requiring seasonal work restrictions to minimize risk of noise exposure to the North Atlantic right whales incidental to pile driving activities to the extent practicable. These seasonal work restrictions are expected to reduce the number of takes of North Atlantic right whales and further reduce vessel strike risk. These seasonal restrictions also afford protection to other marine mammals that are known to use the LIA with greater frequency during winter months, including other baleen whales.

As described previously, no impact pile driving activities may occur January 1 through May 31st. Vineyard Wind plans to install no more than 1 pile per day and only initiate impact pile driving during daylight hours. Foundation installation will not be initiated later than 1.5 hours before civil sunset. Generally, foundation installation may continue after dark when the installation of the same pile began during daylight (1.5 hours before civil sunset), when clearance zones were

fully visible for at least 30 minutes and must proceed for human safety or installation feasibility reasons.

Monopiles must be no larger than 9.6 m in diameter. The impact hammer operator must not exert more than 4,000 kJ on the pile being installed. No more than one pile may be installed at a given time (*i.e.*, concurrent/simultaneous pile driving may not occur).

Noise Attenuation Systems

Vineyard Wind 1 is required to employ noise abatement systems (NASs), also known as noise attenuation systems, during all foundation installation activities to reduce the sound pressure levels that are transmitted through the water. This will reduce acoustic ranges to the Level A harassment and Level B harassment acoustic thresholds and minimize, to the extent practicable, any acoustic impacts resulting from these activities. Vineyard Wind is required to use a double big bubble curtain (DBBC) and HSD in addition to an enhanced BBC maintenance schedule. The refined NAS design (DBBC + HSD + enhanced BBC maintenance schedule) used during the 2023 construction activities will be used on the 15 remaining piles to minimize noise levels. A single bubble curtain, alone or in combination with another NAS device, may not be used for pile driving, as received SFV data reveals this approach was unlikely to attenuate sound sufficiently to be consistent with the target sound reduction of 6 dB. Moreover, the Level B harassment take estimates and impact analysis, as well as the associated findings, are based upon the assumption that the refined NAS design (DBBC + HSD + enhanced BC maintenance schedule) will be used and that the ensonification distances measured in the 2023 SFVs under the

same conditions will occur for the 15 remaining piles. The DBC and HSD must reduce noise levels to those not exceeding expected ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 6-dB sound attenuation, pending results of SFV (see Sound Field Verification section below).

Noise abatement systems, such as bubble curtains, are used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels, but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.*, 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles; those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.*, 2016). Encapsulated bubble systems (*i.e.*, HSDs) can be effective within their targeted frequency ranges (*e.g.*, 100–800 Hz) and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design as well as differences in site conditions

and difficulty in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8-m in diameter) for more than 150 WTGs in comparable water depths (≤ 25 m) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.*, 2020) using single BBCs for noise attenuation.

When a double big bubble curtain is used, Vineyard Wind 1 will be required to maintain numerous operational performance standards, including the enhanced BBC maintenance protocol (Vineyard Wind 1 Enhanced BBC Technical Memo, 2023). These standards are defined in the IHA and include, but are not limited to, a requirement that construction contractors train personnel in the proposed balancing of airflow to the bubble ring; and a requirement that Vineyard Wind 1 submit a performance test and maintenance report to NMFS within 72 hours following the performance test. Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities. In addition, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed. The HSD system Vineyard Wind 1 plans to use would be employed, in coordination with the DBBC, as a near-field attenuation device close to the monopiles (Küsel *et al.*, 2024). Vineyard Wind 1 also plans to follow a DBBC enhanced maintenance protocol, which was used during the 2023 Vineyard Wind 1 pile installation activities. The DBBC enhanced maintenance protocol includes an adjustment from typical bubble curtain operations to drill hoses after every deployment to maximize performance in siltier sediments which are present in the Lease Area. The DBBC enhanced maintenance protocol also includes DBBC hose inspection and clearance, pressure testing of DBBC hoses, visual inspection of DBBC performance, and minimizing disturbance of the DBBC hoses on the seafloor.

Vineyard Wind 1 is required to submit an updated SFV plan to NMFS for approval prior to installing foundations, and must abide by this plan. Vineyard Wind 1 is also required to submit interim and final SFV data results to NMFS and make corrections to the NASs in the case that any SFV

measurements demonstrate noise levels are above those expected. These frequent and immediate reports allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Clearance and Shutdown Zones

NMFS requires the establishment of both clearance and shutdown zones during impact pile driving. The purpose of “clearance” of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a “shutdown” is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity. Due to the increased density of North Atlantic right whales during the months of November and December, as compared to densities in June through October, more stringent clearance and shutdown mitigation measures are planned for these months.

All relevant clearance and shutdown zones during project activities will be monitored by NMFS-approved PSOs and PAM operators. PAM would be conducted at least 24 hours in advance of any pile driving activities. At least one PAM operator would review data from at least 24 hours prior to foundation installation (to increase situational awareness) and actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any North Atlantic right whale sighting at any distance by visual PSOs, or acoustically detected within the PAM monitoring zone (10 km), triggers a delay to commencing pile driving or a shutdown. Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

Prior to the start of pile driving activities, Vineyard Wind must ensure designated areas (*i.e.*, clearance zones, table 11) are clear of marine mammals before commencing activities to minimize the potential for and degree of harassment. PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to commencing foundation installation activities. During this period, the clearance zones will be monitored acoustically by a PAM operator as well. All clearance zones (table 11) must be confirmed to be free of marine mammals

for 30 minutes immediately prior to commencing foundation installation activities. The minimum visibility zone, defined as the area over which PSOs must be able to visually detect marine mammals, would extend 4,000 m for monopile installation from the pile being driven (table 11) and must be visible for 60 minutes. The minimum visibility zone corresponds to the modeled Level A harassment distance for low-frequency cetaceans plus twenty percent, and rounded up to the nearest 0.5 km. The minimum visibility zone must be visually cleared of marine mammals. If this zone is obscured to the degree that effective monitoring cannot occur, pile driving must be delayed. Minimum visibility zone and clearance zones are defined and provided in table 11 for all species.

From November 1 to December 31, vessel-based surveys will be used to confirm the clearance zone (10 km PAM clearance zone (6.2 mi); table 11) is clear of North Atlantic right whales prior to pile driving. The survey will be supported by a team of nine PSOs coordinating visual monitoring across two PSO support vessels and the pile driving platform. The two PSO support vessels, each with three active on-duty PSOs, will be positioned at the same distance on either side of the pile driving vessel. Each PSO support vessel would transit along a steady course along parallel track lines in opposite directions. Each transect line will be surveyed at a similar speed, not to exceed 10 kn (11.5 mph) and would last for approximately 30 minutes to 1 hour. If a North Atlantic right whale is sighted at any distance during the vessel-based survey, pile driving must be delayed until the following day unless an additional vessel-based survey with additional transects is conducted to determine the clearance zone is clear of North Atlantic right whales. Further details on PSO support vessel monitoring efforts are described in the Vineyard Wind 1 application section 11, table 17.

Once pile driving activity begins, any marine mammal entering their respective shutdown zone will trigger the activity to cease. In the case of pile driving, the shutdown requirement may be waived if it is not practicable due to imminent risk of injury or loss of life to an individual or risk of damage to a vessel that creates risk of injury or loss of life for individuals, or if the lead engineer determines there is pile refusal or pile instability.

In situations when shutdown is called for, but Vineyard Wind 1 determines shutdown is not practicable due to aforementioned emergency reasons,

reduced hammer energy must be implemented when the lead engineer determines it is practicable. Specifically, pile refusal or pile instability could result in the inability to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal, and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to “let go.” During these periods of instability, the lead engineer may determine a shut-down is not feasible because the shut-down combined with impending weather conditions may require the piling vessel to “let go” which then

poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Vineyard Wind 1 must document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, impact pile driving may be reinitiated but must be used to maintain stability. From June 1–October 31, if pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has not been visually or acoustically detected for 30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if

pile driving has ceased for 30 minutes or longer. From November 1–December 31, if a North Atlantic right whale is detected either via real-time PAM or vessel-based surveys at any distance from the pile driving location, pile driving must be delayed and must not commence until the following day unless a follow-up vessel-based survey confirms the clearance zone is clear of North Atlantic right whales upon completion of the survey, as determined by the lead PSO. During November 1–December 31, if pile driving has been shut down or delayed due to the presence of 3 or more North Atlantic right whales, pile driving will be postponed until the next day. Shutdown zones vary by species and are shown in table 11 below.

TABLE 11—MINIMUM VISIBILITY, CLEARANCE, SHUTDOWN, AND LEVEL B HARASSMENT ZONES, IN METERS (m), DURING IMPACT PILE DRIVING

Monitoring zones	North Atlantic right whales ^a	Other mysticetes/sperm whales (m) ^b	Pilot Whales, harbor porpoises, and delphinids (m) ^b	Pinnipeds (m) ^b
Minimum Visibility Zone ^c	4,000			
Visual Clearance Zone	Any distance from pile driving PSOs	500	160	160
PAM Clearance and Shutdown Zone ^d	10,000	500	160	160
Visual Shutdown Zone	Any distance from pile driving PSOs	500	160	160
Distance to Level B Harassment Threshold	5,720			

^aFrom December 1–December 31, vessel based surveys using two PSO support vessels would confirm the 10 km (6.2 mi) PAM clearance zone is clear of North Atlantic right whales. If three or more North Atlantic right whales are sighted in November or December, pile driving will be delayed for 24 hours.

^bPile driving may commence when either the marine mammal has voluntarily left the respective clearance zone and has been visually confirmed beyond that clearance zone, or when 30 minutes (North Atlantic right whales (June–October), other non-North Atlantic right whale mysticetes, sperm whales, pilot whales, Risso's dolphins) or 15 minutes (all other delphinids and pinnipeds) have elapsed without re-detection.

^cMinimum visibility zone is the minimum distance that must be visible prior to initiating pile driving, as determined by the lead PSO. The minimum visibility zone corresponds to the Level A harassment distance for low-frequency cetaceans plus twenty percent, and rounded up to the nearest 0.5 km.

^dThe PAM system must be capable of detecting North Atlantic right whales at 10 km during pile driving. The system should also be designed to detect other marine mammals to the maximum extent practicable; however, it is not required these other species be detected out to 10 km given higher frequency calls and echolocation clicks are not typically detectable at large distances.

For any other in-water construction heavy machinery activities (*e.g.*, trenching, cable laying, *etc.*), if a marine mammal is on a path towards or comes within 10 m (32.8 ft) of equipment, Vineyard Wind 1 would be required to delay or cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

In consideration of a public comment, NMFS has included a requirement for Vineyard Wind 1 to shutdown pile driving in the event of a live cetacean stranding where the NMFS Marine Mammal Stranding Network is engaged in herding or other interventions to return animals to the water. Marine mammals involved in live stranding

events (or near-shore atypical milling) are considered especially susceptible to the effects of additional stressors. These shutdown procedures are not related to the investigation of the cause of any such stranding and their implementation is not intended to imply that the activity of the authorized entity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding. Vineyard Wind 1 will be required to shut down pile driving activities according to the measure described in the IHA.

Soft-Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning them or providing them with a chance to leave the area prior to the hammer operating at full capacity. Soft-start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. Vineyard Wind 1 is required to utilize a soft-start protocol for impact pile driving of monopiles by performing 4–6 single hammer strikes at less than 40 percent of the maximum hammer energy followed by at least 1 minute delay before the subsequent hammer strikes. This process shall be conducted at least three times (*e.g.*, 4–6 single strikes,

delay, 4–6 single strikes, delay, 4–6 single strikes, delay) for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers and installation conditions. Vineyard Wind will reduce energy based on consideration of site-specific soil properties and other relevant operational considerations.

Soft start would be required at the beginning of each day's activity and at any time following a cessation of activity of 30 minutes or longer. Prior to soft-start, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. NMFS' MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral

context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

Protected Species Observer and PAM Operator Requirements

PSOs are trained professionals who are tasked with visual monitoring for marine mammals during pile driving activities. The primary purpose of a PSO is to carry out the monitoring, collect data, and, when appropriate, call for the implementation of mitigation measures. Visual monitoring by NMFS-approved PSOs will be conducted at a minimum of 60 minutes before, during, and 30 minutes after all planned impact pile driving activities. In addition to visual observations, NMFS requires Vineyard Wind 1 to conduct PAM using NMFS-approved PAM operators during impact pile driving and vessel transit. PAM must also be conducted for 24 hours in advance and during impact pile driving activities. Visual observations and acoustic detections will be used to support the mitigation measures (e.g., clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must record all incidents of marine mammal occurrence at any distance from the piling locations. PSOs would document all behaviors and behavioral changes, in concert with distance from an acoustic source.

NMFS will require PAM conducted by NMFS-approved PAM operators, following standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. PAM alongside visual data monitoring is valuable to provide the

most accurate record of species presence as possible, and these two monitoring methods are well understood to provide best results when combined together (e.g., Barlow and Taylor, 2005; Clark *et al.*, 2010; Gerrodette *et al.*, 2011; Van Parijs *et al.*, 2021). Acoustic monitoring (in addition to visual monitoring) increases the likelihood of detecting marine mammals within the shutdown and clearance zones of project activities, which when applied in combination with required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality and perhaps range to the vocalizing marine mammals; however, this approach would add additional costs and greater levels of complexity to the project. Larger baleen cetacean species (*i.e.*, mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (such as mid-frequency delphinids or odontocetes) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (e.g., whistles and echolocation clicks). The configuration for collecting the required marine mammal data will be based upon the acoustic data acquisition methods used during the 2023 Vineyard Wind construction campaign (Küsel *et al.*, 2024).

NMFS does not formally administer any PSO or PAM operator training program or endorse specific providers but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and trainer requirements. All PSOs and PAM operators must have successfully attained a bachelor's degree with a major in one of the natural sciences. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO and/or PAM operator duties; (2) previous work experience conducting academic,

commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO/PAM operator (PSOs/PAM operators must be in good standing and demonstrate good performance of PSO/PAM operator duties). All PSOs and PAM operators must have successfully completed a relevant training course within the last 5 years, including obtaining a certificate of course completion that would be submitted to NMFS. All PSOs and PAM operators must demonstrate good standing and consistently good performance of all assigned duties.

For prospective PSOs and PAM operators not previously approved, or for PSOs and PAM operators whose approval is not current, NMFS must review and approve PSO and PAM operator qualifications. Vineyard Wind 1 will be required to submit PSO and PAM operator resumes for approval at least 60 days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO and/or PAM experience, and be accompanied by relevant documentation of successful completion of necessary training. Should Vineyard Wind 1 require additional PSOs or PAM operators throughout the project, Vineyard Wind 1 must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 days prior to planned use of that PSO or PAM operator. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment.

PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications: The PAM operator must have completed a PAM operator training course and demonstrate that they have prior experience with PAM software, equipment, and real-time acoustic detection systems. They must have prior experience independently analyzing archived and/or real-time PAM data to identify and classify baleen whale and other marine mammal vocalizations by species, including North Atlantic right whale and humpback whale vocalizations, and experience with deconflicting multiple species' vocalizations that are similar and/or received concurrently. The PAM operator must be able to identify and classify marine mammal acoustic detections by species in real-time (prioritizing North Atlantic right whales

and noting other marine mammal vocalizations, when detected). At a minimum, for each acoustic detection, the PAM operator must be able to categorically determine whether a North Atlantic right whale is detected, possibly detected, or not detected, and notify the Lead PSO of any confirmed or possible detections, including baleen whale detections that cannot be identified to species. If the PAM software is capable of localization of sounds or deriving bearings and distance, the PAM operator must demonstrate experience using this technique. PAM operators must be independent observers (*i.e.*, not construction personnel), and must demonstrate experience with relevant acoustic software and equipment. A Lead PAM operator must meet all of these requirements and have a minimum of 90 days at-sea experience in the specified role or sufficient alternative experience.

NMFS may approve PSOs as conditional or unconditional. An unconditional PSO is one who has completed training within the last 5 years and attained the necessary experience (*e.g.*, demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those expected to be produced during the respective activity). A conditional PSO may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. Unconditionally approved PSOs are required for impact pile driving activities.

Additionally, impact pile driving activities require PSOs and/or PAM operator monitoring to have a lead on duty. The visual PSO field team, in conjunction with the PAM team (*i.e.*, marine mammal monitoring team) will have a lead member (designated as the "Lead PSO" or "Lead PAM operator") who will be required to meet the unconditional standard. Lead PSO or PAM operators must also have a minimum of 90 days at sea in the specified role, with the conclusion of the most recent relevant experience not more than 18 months previous and must also have experience specifically monitoring baleen whale species. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements (and vice versa).

PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the

target size and distance (binocular use is allowable), ability to conduct field observations and collect data according to the assigned protocols, and the ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area. All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations.

Vineyard Wind must work with the selected third-party PSO and PAM operator provider to ensure PSOs and PAM operators have all equipment (including backup equipment) needed to adequately perform necessary tasks. For PSOs, this includes, but is not limited to, accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. PSO equipment, at a minimum, shall include:

- At least one thermal (infrared) imaging device suited for the marine environment;
- Reticle binoculars (*e.g.*, 7 × 50) of appropriate quality (at least one per PSO, plus backups);
- Global positioning units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and,
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

At least two PSOs on the pile driving vessel must be equipped with functional Big Eye binoculars (*e.g.*, 25×150; 2.7 view angle; individual ocular focus; height control), Big Eye binocular would be pedestal mounted on the deck at the best vantage point that provides for optimal sea surface observation and PSO safety. PAM operators must have the appropriate equipment (*i.e.*, a computer station equipped with a data collection software system available

wherever they are stationed) and use a NMFS-approved PAM system to conduct monitoring. During periods of low visibility (*i.e.*, fog, precipitation, darkness, poor weather conditions), PSOs must use alternative monitoring technology (*e.g.*, infrared or thermal cameras) to monitor mitigation zones. PSOs aboard the pile driving vessel must have access to two FLIR cameras with two screens, thermal clip-ons, hand-held night vision devices, and thermal monoculars. PSOs aboard the PSO support vessels must have access to one FLIR camera with a single screen, thermal clip-ons, hand-held night vision devices, and thermal monoculars. The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but Vineyard Wind 1 is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA. Reference materials must be available aboard all project vessels for identification of protected species.

PSOs and PAM operators are not be permitted to exceed 4 consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period. If the schedule includes PSOs and PAM operators on-duty for 2-hour shifts, a minimum 1-hour break between watches is allowed.

The PSOs are responsible for monitoring the waters surrounding the pile driving site to the farthest extent permitted by sighting conditions, including pre-start clearance and shutdown zones, prior to, during, and following foundation installation activities. Monitoring must be done while free from distractions and in a consistent, systematic, and diligent manner. If PSOs cannot visually monitor the minimum visibility zone of 4 km (2.5 mi) prior to foundation pile driving at all times using the required equipment, pile driving operations must not commence or must shutdown if they are currently active. All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO, in order to obtain 360-degree visual coverage of the entire clearance and shutdown zones, and as much of the Level B harassment zone as possible. PAM operators may be located on a vessel or remotely on-shore, and must assist PSOs in ensuring full coverage of the clearance and shutdown zones. The PAM operator must monitor to and past the clearance zones for large whales as far as possible.

All on-duty PSOs must remain in real-time contact with the on-duty PAM operator(s). PAM operators must immediately communicate all acoustic detections of marine mammals to PSOs, including any determination regarding species identification, distance, and bearing (where relevant) relative to the pile being driven and the degree of confidence (*e.g.*, possible, probable detection) in the determination. The PAM operator must inform the Lead PSO(s) on duty of animal detections approaching or within applicable ranges of interest to the activity occurring via the data collection software system (*i.e.*, Mysticetus or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay). All on-duty PSOs and PAM operator(s) must remain in contact with the on-duty construction personnel responsible for implementing mitigations (*e.g.*, delay to pile driving) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel. It is the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

At least three PSOs (on the pile driving vessel) and one PAM operator must be on-duty and actively monitoring for marine mammals 60 minutes before, during, and 30 minutes after foundation installation in accordance with a NMFS-approved PAM Plan. PAM must also be conducted for at least 24 hours prior to foundation pile driving activities, and the PAM operator must review all detections from the previous 24-hour period prior to pile driving activities to increase situational awareness. Throughout the year (June through December), at least three PSOs must also be on-duty and actively monitoring from PSO support vessels. There must be at least two PSO support vessels with on-duty PSOs during any pile driving activities from June through December.

In addition to monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the necessary information to inform an estimate of the amount of take that occurred during the project, better understand the impacts of the project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively

manage activities and mitigation in the future. Data reported includes information on marine mammal sightings, activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken.

For all visual monitoring efforts and marine mammal sightings, the following information must be collected and reported to NMFS Office of Protected Resources: the date and time that monitored activity begins or ends, the construction activities occurring during each observation period, the watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform), the PSO who sighted the animal, the time of sighting; the weather parameters (*e.g.*, wind speed, percent cloud cover, visibility), the water conditions (*e.g.*, Beaufort sea state, tide state, water depth); all marine mammal sightings, regardless of distance from the construction activity; species (or lowest possible taxonomic level possible), the pace of the animal(s), the estimated number of animals (minimum/maximum/high/low/best), the estimated number of animals by cohort (*e.g.*, adults, yearlings, juveniles, calves, group composition, *etc.*), the description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics), the description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity, the animal's closest distance and bearing from the pile being driven and estimated time entered or spent within the Level A harassment and/or Level B harassment zone(s), use of noise attenuation device(s), and specific phase of activity (*e.g.*, soft-start for pile driving, active pile driving, *etc.*), the marine mammal occurrence in Level A harassment or Level B harassment zones, the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and time and location of the action, and other human activity in the area.

On May 19, 2023, Vineyard Wind submitted a Pile Driving Monitoring Plan for the 2023 IHA, including an Alternative Monitoring Plan, which was approved by NMFS. The Plan included details regarding PSO and PAM monitoring protocols and equipment planned for use. More specifically, the

PAM portion of the plan included a description of all PAM equipment, addressed how the passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind as described in NOAA and BOEM Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs (Van Parijs *et al.*, 2021). This plan also identified the efficacy of the technology at detecting marine mammals in the clearance and shutdown zones under all of the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting. On May 15, 2024, Vineyard Wind 1 submitted an updated Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review. The Plan must be approved by NMFS prior to the start of foundation pile driving, and Vineyard Wind 1 must abide by this plan.

Sound Field Verification

Vineyard Wind 1 is required to conduct Thorough SFV measurements during impact pile driving activity associated with the installation of, at minimum, the first monopile foundation and Abbreviated SFV measurements during impact installation of the remaining monopiles to demonstrate noise levels are at or below those measured during the 2023 Vineyard Wind construction campaign (Küsel *et al.*, 2024) and considered as maximum distances in this IHA. NMFS recognizes that the SFV data collected in 2023 occurred in warmer weather months and that water temperature can affect the sound speed profile and thus propagation rates. Therefore, if impact pile driving takes place in December, comprehensive SFV measurements must be conducted during impact pile driving activity associated with the installation of, at minimum, the first monopile foundation. Subsequent Thorough SFV measurements will also be required should larger piles be installed or if additional piles are driven that are anticipated to produce louder sound fields than those previously measured (e.g., higher hammer energy, greater number of strikes, *etc.*). The required measurements and reporting associated with SFV can be found in the IHA. These requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Vineyard Wind 1 would be required to make adjustments quickly (e.g., add additional sound

attenuation) to ensure marine mammals are not experiencing noise levels above those considered in this analysis. For recommended SFV protocols for impact pile driving, please consult International Organization for Standardization (ISO) 18406 *Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving* (2017). On May 15, 2024, Vineyard Wind 1 submitted an updated SFV plan to NMFS Office of Protected Resources for review. The Plan must be approved by NMFS prior to the start of foundation pile driving, and Vineyard Wind 1 must abide by this plan.

For any pile driving activities, Vineyard Wind 1 is also be required to submit interim and final SFV data results to NMFS and make corrections to the noise attenuation systems in the case that any SFV measurements demonstrate noise levels are above those measured during the 2023 Vineyard Wind construction campaign (Küsel *et al.*, 2024) and considered as maximum distances in this IHA. These frequent and immediate reports will allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Reporting

Prior to any construction activities occurring, Vineyard Wind 1 must provide a report to NMFS Office of Protected Resources that demonstrates that all Vineyard Wind 1 personnel, which includes the vessel crews, vessel captains, PSOs, and PAM operators have completed all required training. NMFS requires standardized and frequent reporting from Vineyard Wind 1 during the active period of the IHA. All data collected relating to the Project will be recorded using industry-standard software (e.g., Mysticetus or a similar software) installed on field laptops and/or tablets. Vineyard Wind 1 is required to submit weekly, monthly, annual, and situational reports. Vineyard Wind 1 must review SFV results within 24 hours to determine whether measurements exceeded modeled (Level A harassment) and expected (Level B harassment) thresholds.

Vineyard Wind 1 must provide the initial results of the SFV measurements to NMFS Office of Protected Resources in an interim report after each foundation installation event as soon as they are available and prior to a subsequent foundation installation, but no later than 48 hours after each

completed foundation installation event. The report must include, at minimum: hammer energies/schedule used during pile driving, including the total number of strikes and the maximum hammer energy; peak sound pressure level (SPL_{pk}); root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}); and sound exposure level (SEL, in single strike for pile driving, SEL_{ss}); for each hydrophone, including at least the maximum, arithmetic mean, minimum, median (L50) and L5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment isopleths; calculated using the maximum-over-depth L5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of 2023 measured results against the measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients, pile identifier name, location of the pile and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; if filtering is applied, full filter characteristics; and hydrophone specifications including the type, model, and sensitivity. Vineyard Wind 1 is also required to report any immediate observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any in-situ calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, Vineyard Wind 1 will be required to indicate full details of the calibration procedure, results, and any associated issues in the 48-hour interim reports.

Vineyard Wind must review Abbreviated SFV results for each pile within 24 hours of completion of the foundation installation (inclusive of pile driving and any drilling), and, assuming measured levels at 750 m did not exceed the thresholds defined during Thorough SFV, does not need to take any additional action. Results of Abbreviated SFV must be submitted with the weekly pile driving report.

The final results of SFV measurements from each foundation installation must be submitted as soon as possible, but no later than 90 days following completion of all annual SFV measurements. The final report must

include all details prescribed above for the interim report as well as, at minimum, the following: the peak sound pressure level (SPL_{pk}); the root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}); the single strike sound exposure level (SEL_{ss}); the integration time for SPL_{rms} , the spectrum, and the 24-hour cumulative SEL extrapolated from measurements at all hydrophones. The final report must also include at least the maximum, mean, minimum, median (L_{50}) and L_5 (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated at all decade band levels) at the receiver locations should be reported; the sound levels reported must be in median, arithmetic mean, and L_5 (95 percent exceedance) (*i.e.*, average in linear space), and in dB, range of transmission loss coefficients; the local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile); baseline pre- and post-activity ambient sound levels (broadband and/or within frequencies of concern); a description of depth and sediment type, as documented in the Construction and Operation Plan (COP), at the recording and foundation installation locations; the extents of the measured Level A harassment and Level B harassment zone(s); hammer energies required for pile installation and the number of strikes per pile; the hydrophone equipment and methods (*i.e.*, recording device, bandwidth/sampling rate; distance from the pile where recordings were made; the depth of recording device(s)); a description of the SFV measurement hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s); any filters used in hardware or software; any limitations with the equipment; and other relevant information; the spatial configuration of the noise attenuation device(s) relative to the pile, a description of the noise abatement system and operational parameters (*e.g.*, bubble flow rate, distance deployed from the pile, *etc.*), and any action taken to adjust the noise abatement system. A discussion which includes any observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices.

If at any time during the project Vineyard Wind 1 becomes aware of any issue(s) that may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, which were previously transmitted or communicated to NMFS Office of Protected Resources, Vineyard Wind 1 must inform NMFS Office of Protected Resources within 1 business day of becoming aware of this issue or before the next pile is driven, whichever comes first.

Weekly Report—During foundation installation activities, Vineyard Wind 1 must compile and submit weekly marine mammal monitoring reports for foundation installation pile driving to NMFS Office of Protected Resources that document the daily start and stop of all pile driving activities; the start and stop of associated observation periods by PSOs; details on the deployment of PSOs; a record of all detections of marine mammals (acoustic and visual); any mitigation actions (or if mitigation actions could not be taken, provide reasons why); and details on the noise abatement system(s) (*e.g.*, system type, distance deployed from the pile, bubble rate, *etc.*). Weekly reports will be due on Wednesday for the previous week (Sunday to Saturday). The weekly reports are also required to identify which turbines become operational and when (a map must be provided).

Monthly Report—Vineyard Wind 1 is required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route); number of piles installed; all detections of marine mammals; and any mitigative actions taken. Monthly reports would be due on the 15th of the month for the previous month. The monthly report would also identify which turbines become operational and when (a map must be provided).

Final Annual Reporting—Vineyard Wind 1 is required to submit its draft annual report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted under the IHA within 90 calendar days of the completion of activities occurring under the IHA. A final annual report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. Information contained within this report is described at the beginning of this

section. Full PAM detection data, metadata, and location of recorders must be submitted within 90 days following completion of impact pile driving foundations and every 90 calendar days for transit lane PAM using the International Organization for Standardization (ISO) standard metadata forms and instructions available on the NMFS Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Concurrently, the full acoustic recordings from real-time systems must also be sent to the National Centers for Environmental Information (NCEI, <https://www.ncei.noaa.gov/products/passive-acoustic-data>) for archiving.

Situational Reporting—Specific situations encountered during the Project require immediate reporting. For instance, if a North Atlantic right whale is sighted with no visible injuries or entanglement at any time by project PSOs or project personnel, Vineyard Wind 1 must immediately report the sighting to NMFS as soon as possible or within 24 hours after the initial sighting. All North Atlantic right whale acoustic detections within a 24-hour period should be collated into one spreadsheet and reported to NMFS as soon as possible but must be reported within 24 hours. Vineyard Wind 1 should report sightings and acoustic detections by downloading and completing the Real-Time North Atlantic Right Whale Reporting Template spreadsheet found here: <https://www.fisheries.noaa.gov/resource/document/template-datasheet-real-time-north-atlantic-right-whale-acoustic-and-visual>. Vineyard Wind 1 must save the completed spreadsheet as a .csv file and email it to NMFS Northeast Fisheries Science Center—Protected Resources Division (NEFSC-PRD) (ne.rw.survey@noaa.gov), NMFS GARFO-PRD (nmfs.gar.incidental-take@noaa.gov), and NMFS Office of Protected Resources (OPR) (pr.itp.monitoringreports@noaa.gov). If the sighting is in the Southeast (North Carolina through Florida), sightings will be reported via the template and to the Southeast Stranding Hotline 877-WHALE-HELP (877-942-5343) with the observation information provided below (PAM detections are not reported to the Hotline). If Vineyard Wind 1 is unable to report a sighting through the spreadsheet within 24 hours, Vineyard Wind 1 will call the relevant regional hotline (Greater Atlantic Region [Maine through Virginia] Hotline 866-755-6622; Southeast Stranding Hotline 877-WHALE-HELP) with the observation

information provided below.

Observation information will include: the time (note time format), date (MM/DD/YYYY), location (latitude/longitude in decimal degrees; coordinate system used) of the observation, number of whales, animal description/certainty of observation (follow up with photos/video if taken), reporter's contact information, and lease area number/project name, PSO/personnel name who made the observation, and PSO provider company (if applicable). If Vineyard Wind 1 is unable to report via the template or the regional hotline, Vineyard Wind 1 will enter the sighting via the WhaleAlert app (<http://www.whalealert.org/>). If this is not possible, the sighting will be reported to the U.S. Coast Guard via channel 16. The report to the Coast Guard must include the same information as would be reported to the Hotline (see above). PAM detections would not be reported to WhaleAlert or the U.S. Coast Guard. If a non-North Atlantic right whale large whale is observed, Vineyard Wind 1 will be required to report the sighting via WhaleAlert app (<http://www.whalealert.org/>) as soon as possible but within 24 hours.

In the event that personnel involved in the Project discover a stranded, entangled, injured, or dead marine mammal, Vineyard Wind 1 must immediately report the observation to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida) call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, Vineyard Wind must report the incident within 24 hours to NMFS OPR (PR.OTP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region to the NMFS GARFO (nmfs.gar.incidental-take@noaa.gov) or if in the Southeast Region, to the NMFS Southeast Regional Office (SERO; secmammalreports@noaa.gov). Note, the stranding hotline may request the report be sent to the local stranding network response team. The report must include contact information (e.g., name, phone number, etc.), time, date, and location (i.e., specify coordinate system) of the first discovery (and updated location information, if known and applicable), species identification (if known) or description of the animal(s) involved, condition of the animal(s) (including carcass condition if the animal is dead), observed behaviors of the animal(s) (if alive), photographs or video footage of the animal(s) (if

available), and general circumstances under which the animal was discovered.

If the injury, entanglement, or death was caused by a project activity, Vineyard Wind 1 will be required to immediately cease all activities until NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. NMFS OPR may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance consistent with the adaptive management provisions. Vineyard Wind 1 would not resume their activities until notified by NMFS Office of Protected Resources.

In the event of a suspected or confirmed vessel strike of a marine mammal by any vessel associated with the Project or other means by which Project activities caused a non-auditory injury or death of a marine mammal, Vineyard Wind 1 must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida) call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, Vineyard Wind must immediately report the incident to NMFS OPR (PR.OTP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region to the NMFS GARFO (nmfs.gar.incidental-take@noaa.gov) or if in the Southeast Region, to the NMFS SERO (secmammalreports@noaa.gov). The report must include time, date, and location (i.e., specify coordinate system) of the incident; species identification (if known) or description of the animal(s) involved (i.e., identifiable features including animal color, presence of dorsal fin, body shape and size, etc.); vessel strike reporter information (name, affiliation, email for person completing the report); vessel strike witness (if different than reporter) information (e.g., name, affiliation, phone number, platform for person witnessing the event, etc.); vessel name and/or MMSI number; vessel size and motor configuration (inboard, outboard, jet propulsion); vessel's speed leading up to and during the incident; vessel's course/heading and what operations were being conducted (if applicable); part of vessel that struck marine mammal (if known); vessel damage notes; status of all sound sources in use at the time of the strike; if the marine mammal was seen before the strike event; description of behavior of the marine mammal before the strike event

(if seen) and behavior immediately following the strike; description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, etc.) immediately preceding the strike; estimated (or actual, if known) size and length of marine mammal that was struck, if available; description of the presence and behavior of any other marine mammals immediately preceding the strike, other animal-specific details if known (e.g., length, sex, age class); behavior or estimated fate of the marine mammal post-strike (e.g., dead, injured but alive, injured and moving, external visible wounds (linear wounds, propeller wounds, non-cutting blunt-force trauma wounds); blood or tissue observed in the water, status unknown, disappeared), to the extent practicable; any photographs or video footage of the marine mammal(s); and, any additional notes the witness may have from the interaction. For any numerical values provided (i.e., location, animal length, vessel length, etc.), please provide if values are actual or estimated. If there is a suspected or confirmed vessel strike of a marine mammal by any vessel associated with the Project or other means by which Project activities caused a non-auditory injury or death of a marine mammal, Vineyard Wind 1 will be required to immediately cease activities until the NMFS Office of Protected Resources is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. NMFS OPR may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Vineyard Wind 1 may not resume their activities until notified by NMFS OPR.

Sound Field Verification—Vineyard Wind 1 will be required to submit interim SFV reports after each foundation installation within 48 hours. A final SFV report for all monopile foundation installation monitoring will be required within 90 days following completion of acoustic monitoring.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival

(50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take of Marine Mammals section, we estimated the maximum number of takes by Level A harassment and Level B harassment that could occur from Vineyard Wind’s specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.*, the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this notice of the final IHA, we evaluate the likely impacts of the harassment takes that are authorized in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or authorized for any species or stock.

We base our analysis and negligible impact determination on the number of takes that are authorized, and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the

affected individuals and the number and context of the individuals affected.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in table 1 given that some of the anticipated effects of the Vineyard Wind 1 construction activities on marine mammals are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below.

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis where appropriate, for example for North Atlantic right whales given the population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Vineyard Wind’s activities, and then providing species- or stock-specific information allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock.

As described previously, no serious injury or mortality is anticipated or authorized in this IHA. Any Level A harassment authorized would be in the form of auditory injury (*i.e.*, PTS). For all species, the amount of take authorized represents the maximum amount of Level A harassment and Level B harassment that is reasonably expected to occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.*, sounds of a similar received level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude relative to a closer sound source (DeRuiter and Doukara, 2012; Falcone *et al.*, 2017). As described in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, the intensity and duration of any impact resulting from exposure to the Vineyard

Wind 1 activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.*, reproductive status, age class, health) and an individual’s experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.*, behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources. Level B harassment of marine mammals may consist of behavioral modifications (*e.g.*, avoidance, temporary cessation of foraging or communicating, changes in respiration or group dynamics, masking) and may include auditory impacts in the form of temporary hearing loss. In addition, some of the lower-level physiological stress responses (*e.g.*, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect, and fewer data exist relating these responses to specific received levels of sound. Take by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect the Vineyard Wind 1 pile driving activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur if an animal is close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and

leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects that result in potentially lost feeding opportunities for animals are not considered a likely outcome of this activity.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than 1 day or recur on subsequent days (Southall *et al.*, 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.*, 2008; Barlow *et al.*, 2020; Henderson *et al.*, 2016; Schorr *et al.*, 2014). It is important to note the water depth in the Limited Installation Area is shallow (ranging up to 37 to 49.5 m), so deep diving species such as sperm whales are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to note that the estimated number of takes does not necessarily equate to the number of individual animals Vineyard Wind 1 expects to harass (which is lower), but rather to the instances of take (*i.e.*, exposures above the Level B harassment thresholds) that may occur. Some individuals of a species may experience recurring instances of take over multiple days throughout the year while some members of a species or stock may experience one instance of take exposure as they move through an area, which means that the number of individuals taken may be smaller than the total estimated takes for a species or stock. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (*e.g.*, some of the mysticetes), it is more likely that each take represents a different individual whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

Impacts from pile driving will be minimized through implementation of mitigation measures, including use of a sound attenuation system, soft-starts, the implementation of clearance zones

that would facilitate a delay to pile driving commencement, and implementation of shutdown zones. All these measures are designed to avoid or minimize harassment. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. The requirement to couple visual monitoring and PAM before and during all foundation installation will increase the overall capability to detect marine mammals compared to one method alone.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes is in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will provide opportunities to compensate for reduced or lost foraging (Keen *et al.*, 2021). Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.*, 2018; Harris *et al.*, 2017; King *et al.*, 2015; National Academy of Science, 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to the Vineyard Wind 1 activities and, as described earlier, the authorized takes by Level B harassment may represent takes in the form of direct behavioral disturbance, TTS, or both. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the **Federal Register** notice for the proposed IHA (89 FR 31008, April 23, 2024), in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact pile driving is a broadband noise sources but generates sounds in the lower frequency ranges (with most of the energy below 1–2 kHz, but with a small amount energy ranging up to 20 kHz); therefore, in general and

all else being equal, the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than in other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given that the frequencies produced by these activities do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from the Vineyard Wind 1 pile driving activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. In addition, the required mitigation measures further reduce the potential for TTS in mysticetes.

Generally, both the degree and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously (see Estimated Take). An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be unlikely considering the required mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in Potential Effects of Specified Activities on Marine Mammals and Their Habitat), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes). While the pile driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. Overall, given the few instances in which any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS would overlap the entirety of an individual's critical hearing range, it is unlikely that TTS (of the nature expected to result from the project's activities) would result in behavioral changes or other impacts that would impact any individual's (of any

hearing sensitivity) reproduction or survival.

Permanent Threshold Shift (PTS)

NMFS proposed to authorize a very small amount of take by PTS of some individual marine mammals of some species. The numbers of proposed takes by Level A harassment are relatively low for all marine mammal stocks and species (table 11). We anticipate that PTS may occur from exposure to impact pile driving, which produces sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.*, 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in older harbor seals (Reichmuth *et al.*, 2019). However, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS, 2018; Southall *et al.*, 2019a)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from impact pile driving, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. In addition, during impact pile driving, given sufficient notice through use of required soft-start prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is disturbing prior to it resulting in severe PTS.

Auditory Masking or Communication Impairment

The potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.*, decreased ability to communicate, forage

effectively, or detect predators), but an important difference is that masking only occurs during the period of the signal, versus TTS, which continues beyond the duration of the signal. Also, though masking can result from the sum of exposure to multiple signals, none of these signals might individually cause TTS. Fundamentally, masking is considered more often in the context of chronic effects because masking is of more concern when an animal experiences masking for longer durations, which would typically happen as a result of exposure to multiple activities (*e.g.*, in more heavily industrialized areas or near shipping lanes). Specifically, reduced ability to hear or interpret critical cues becomes much more likely to cause a problem for an animal the longer it is occurring. Also, inherent in the concept of masking is the fact that it is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, when the animal was utilizing sounds at the masked frequency).

As our analysis has indicated, we expect that impact pile driving may occur intermittently for several hours per day, for multiple days. Masking is fundamentally more of a concern at lower frequencies (which are pile driving dominant frequencies), because low-frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low-frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. As mentioned above (see Description of Marine Mammals in the Area of Specified Activities), the LIA does not overlap critical habitat or BIAs for any species, and temporary avoidance of the pile driving area by marine mammals would likely displace animals to areas of sufficient habitat. In summary, the nature of the Vineyard Wind 1 activities, paired with habitat use patterns by marine mammals, does not support the likelihood of take due to masking effects or that masking would have the potential to affect reproductive success or survival, and we are not authorizing such take.

Impact on Habitat and Prey

Construction activities may result in fish and invertebrate mortality or injury very close to the source, and the Vineyard Wind 1 activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey,

and the implementation of mitigation measures such as the use of a noise attenuation system and soft start during impact pile driving would further limit the degree of impact. Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range but, because of the relatively small area of the habitat that may be affected at any given time (*e.g.*, around a pile being driven) and the temporary nature of the disturbance on prey species, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. There is no indication that displacement of prey would impact individual fitness and health, particularly since suitable prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Cable presence is not anticipated to impact marine mammal habitat, as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammal prey to the extent they would be unavailable for consumption. Although many species of marine mammal prey can detect electromagnetic fields, previous studies have shown little impacts on habitat use (Hutchinson *et al.*, 2018). Burying the cables and the inclusion of protective shielding on cables will also minimize any impacts of electromagnetic fields on marine mammal prey.

As discussed in the Description of the Specified Activity section, this IHA addresses the take incidental to the installation of 15 foundations, which will gradually become operational following construction completion. Turbines may also become operational during the period of the IHA. While there are likely to be oceanographic impacts from the presence of operating turbines, meaningful oceanographic impacts relative to stratification and mixing that would significantly affect marine mammal foraging and prey over large areas in key foraging habitats, resulting in impacts to the reproduction or survival of any individual marine mammals, are not anticipated from the Vineyard Wind activities covered under this IHA, yet are likely to be minor if impacts do occur.

The presence of wind turbines within the Lease Area could have longer-term impacts on marine mammal habitat, as the project would result in the persistence of the structures within marine mammal habitat for more than 30 years. For piscivorous marine

mammal species, the presence of structures could result in a beneficial reef effect which may lead to increases in the availability of prey. However, turbine presence and operation is generally likely to result in certain oceanographic effects in the marine environment, and may adversely alter aggregations and distribution of marine mammal zooplankton prey through changing the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022). In the recently released BOEM and NOAA Fisheries North Atlantic Right Whale Strategy (BOEM *et al.*, 2024), the agencies identify the conceptual pathway by which changes to ocean circulation could potentially lead to fitness reduction of North Atlantic right whales, who primarily forage on copepods (see figure 2 in the Strategy). As described in the Potential Effects to Marine Mammal Habitat section of the **Federal Register** notice for the proposed IHA, there is uncertainty regarding the intensity (or magnitude) and spatial extent of turbine operation impacts on marine mammals habitat, including planktonic prey. Recently, a National Academy of Sciences, Engineering, and Medicine panel of independent experts concluded that the impacts of offshore wind operations on North Atlantic right whales and their habitat in the Nantucket Shoals region is uncertain due to the limited data available at this time and recognized what data is available is largely based on models from the North Sea that have not been validated by observations (NAS, 2023). The report also identifies that major oceanographic changes have occurred to the Nantucket Shoals region over the past 25 years and it will be difficult to isolate from the much larger variability introduced by natural and other anthropogenic sources (including climate change). Also, specific to this activity, the LIA is located outside of the higher North Atlantic right whale density areas in Southern New England and more than 20 km west of Nantucket Shoals, which is known to be a critical feeding area for North Atlantic right whales.

Mitigation To Reduce Impacts on All Species

The IHA includes a variety of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales (the latter is described in more detail below). For

impact pile driving of foundation piles, ten overarching mitigation measures are required, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones triggering a delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start; (7) use of noise attenuation technology; (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Vineyard Wind 1 personnel must be reported to PSOs; (9) sound field verification monitoring; and (10) Vessel Strike Avoidance measures to reduce the risk of a collision with a marine mammal and vessel.

The Mitigation section discusses the manner in which the required mitigation measures reduce the magnitude and/or severity of the take of marine mammals, including the following. For activities with large harassment isopleths, Vineyard Wind 1 will be required to reduce the noise levels generated to the lowest levels practicable. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.*, avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (Vineyard Wind 1 will not use a hammer with an energy rating greater than necessary to install piles). Clearance zone and shutdown zone implementation, which are required when marine mammals are within given distances associated with certain impact thresholds for all activities, will reduce the magnitude and severity of marine mammal take. Additionally, the use of multiple PSOs, PAM, and maintaining awareness of marine mammal sightings reported in the region will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. For North Atlantic right whales specifically, by far the most effective mitigation is the avoidance of pile driving January through May in the months with the highest densities of whales, and when they are expected to be engaged in foraging and other important behaviors (*e.g.*, social, mating), as disruption of behavioral patterns during these month would be more likely to impact reproductive success or survival.

Mysticetes

Five mysticete species (comprising five stocks) of cetaceans (North Atlantic right whale, humpback whale, fin whale, sei whale, and minke whale) may be taken by harassment. These species, to varying extents, utilize the specific geographic region, including the LIA, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

NMFS reviewed recent PSO observational data from offshore wind projects in southern New England (*i.e.*, South Fork at OCS-A-0517 and Vineyard Wind 1 at OCS-A-0501) where pile driving construction activities occurred. During pile-driving construction activities for Vineyard Wind 1, in 2023 from early June through December (RPS, 2023), there were 36 whale observations consisting of 4 unidentified non-North Atlantic right whales, 17 detections of humpback whales, eight detections of fin whales, six detections of minke whales, and one unidentified baleen whale (RPS, 2023). Three of these observations of mysticetes (one humpback whale sighting, one fin whale sighting, and one group of three fin whales) occurred while the hammer was engaged (which was operating at full power). Behaviors noted included surfacing, blowing, fluking, and feeding. At South Fork, a total of 39 hours 32 minutes of active impact pile driving was conducted across installation of the 13 monopiles on 15 different days. The most PSO visual watch effort occurred aboard the Bokalift 2 (908 hours), and PSO effort from the four dedicated monitoring vessels ranged from 426 to 757 hours. In total (with and without pile driving) foundation installation PSOs observed 348 mysticete groups comprising 552

individuals; 29 of these detections, totaling 51 individuals, occurred during pile driving (table 14 in South Fork Wind (2023)). None of the observed behaviors of mysticetes noted by either the Vineyard Wind 1 or South Fork PSOs were indicative of distress, alarm, or other adverse reactions (RPS, 2023; South Fork Wind, 2023).

Mysticetes encountered in the LIA are expected to be migrating through and/or engaged in foraging behavior. The extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Many mysticetes are expected to predominantly be migrating through the LIA towards or from primary feeding habitats (*e.g.*, Cape Cod Bay, Great South Channel, and Gulf of St. Lawrence). While we have acknowledged in the Potential Effects to Marine Mammal Habitat section of the **Federal Register** notice for the proposed IHA (89 FR 31008, April 23, 2024) that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving, given the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging are expected to be minor. Whales temporarily displaced from the LIA are expected to have sufficient remaining feeding habitat available to them, and would not be prevented from feeding in other areas within the biologically important feeding habitats, including to the east near Nantucket Shoals. In addition, any displacement of whales or interruption of foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures of individuals is dependent upon their residency time, with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area more likely to be exposed more than once. For mysticetes, where relatively low numbers of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock; see table 11) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual; with perhaps a subset of takes for a few species potentially representing a few repeated Level B harassment takes of a limited number of individuals across multiple days. In other words, the behavioral disturbance to any individual mysticete would, therefore, be expected to most likely

occur within a single day, or potentially across a few days, and would not be expected to impact the animal's fitness for reproduction or survival.

In general, the total duration of exposure would not be continuous throughout any given day and pile driving would not occur on all consecutive days due to weather delays or any number of logistical constraints Vineyard Wind 1 has identified, including the fact that the pile installation vessel must return to port after every 6 monopile foundations are installed to pick up additional monopiles. As mentioned in the Detailed Description of the Specified Activity section of the **Federal Register** notice for the proposed IHA, upon completion of installation of a batch of monopiles, the pile installation vessel would return to a Canadian port in Halifax to load an additional batch of monopiles. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Humpback whales, minke whales, fin whales and sei whales are the mysticete species for which PTS is anticipated and authorized. As described previously, PTS for mysticetes from some project activities may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile driving noise is concentrated (*i.e.*, only a small subset of their expected hearing range) and would not be expected to impact individuals' fitness for reproductive success or survival.

North Atlantic Right Whales

North Atlantic right whales are listed as endangered under the ESA and as both depleted and strategic under the MMPA. As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the **Federal Register** notice for the proposed IHA, North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.*, Corkeron *et al.*, 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right

whale population is of heightened concern and, therefore, merits additional analysis and consideration.

This IHA authorizes 7 takes of North Atlantic right whale by Level B harassment only, which equates to approximately 2.1 percent of the stock abundance, if each take were considered to be of a different individual. No Level A harassment, serious injury, or mortality is anticipated or authorized for this species.

As described in the Description of Marine Mammals in the Area of Specified Activities section, North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. Level B harassment of North Atlantic right whales resulting from the project's activities is expected to primarily be in the form of temporary avoidance of the immediate area of construction. Required mitigation measures will effect the least practicable adverse impact and the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME.

In general, North Atlantic right whales in the LIA are expected to be engaging in migratory, feeding, and/or social behavior. Migrating North Atlantic right whales would typically be moving through the LIA, rather than lingering for extended periods of time (thereby limiting the potential for repeat exposures); however, foraging whales may remain in the LIA, with an average residence time of 13 days between December and May (Quintana-Rizzo *et al.*, 2021). Southern New England, including the LIA, is part of a known migratory corridor for North Atlantic right whales and may be a stopover site for migrating North Atlantic right whales moving to or from southeastern calving grounds and northern foraging grounds. North Atlantic right whales are primarily concentrated in the northeastern and southeastern sections of the Massachusetts Wind Energy Area (MA WEA) (*i.e.*, east of the LIA) during the summer (June-August) and winter (December-February) while distribution likely shifts to the west, closer to the LIA, into the RI/MA WEA in the spring (March-May) (Quintana-Rizzo *et al.*, 2021). However, North Atlantic right whales range outside of the LIA for their main feeding, breeding, and calving

activities. It is important to note that the IHA prohibits impact pile driving activities from January through May.

Foundation installation pile driving will only occur during times when, based on the best available scientific data, North Atlantic right whales are less frequently encountered and less likely to be engaged in critical foraging behavior (although NMFS recognizes North Atlantic right whales may forage year-round in SNE). The potential types, severity, and magnitude of impacts are also anticipated to mirror that described in the general *Mysticetes* section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (e.g., change in respiration, change in heart rate). Importantly, the effects of the activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migration and foraging for North Atlantic right whales. As noted above, for North Atlantic right whales, this IHA would authorize up to 7 takes, by Level B harassment. These takes are expected to be in the form of temporary behavioral disturbance, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding. Further, given many of these takes are generally expected to occur to different individual right whales migrating through (i.e., most individuals would not be impacted on more than one day in a year), with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales migrate, forage, or socialize in the LIA but are not expected to remain in this habitat for extensive durations relative to core foraging habitats to the east, south of Nantucket and Martha's Vineyard, Cape Cod Bay, or the Great South Channel (Quintana-Rizzo *et al.*, 2021). Any temporarily displaced animals would be able to return to or continue to travel through the LIA and subsequently utilize this habitat once activities have ceased.

Although acoustic masking may occur in the vicinity of the foundation installation activities, based on the

acoustic characteristics of noise associated with pile driving (e.g., frequency spectra, short duration of exposure), NMFS expects masking effects to be minimal during impact pile driving. In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which is expected to be intermittent within a day and confined to the months in which North Atlantic right whales are at lower densities and primarily moving through the area. TTS could also occur in some of the exposed animals, making it more difficult for those individuals to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, any TTS would likely be of low amount, limited duration, and limited to frequencies where most construction noise is centered (below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the **Federal Register** notice for the proposed IHA, the distance of the receiver from the source influences the severity of response, with greater distances typically eliciting less severe responses. NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile driving; however, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile-driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.*, 1983), on the order of hundreds of meters up to 1 to 2 km. This diversion from a migratory path otherwise uninterrupted by the project's activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment or survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production while not being forced out of their portion of their habitat.

North Atlantic right whale presence in the LIA is year-round. However, abundance during summer months is lower compared to the winter months, with spring and fall serving as "shoulder seasons" wherein abundance

waxes (fall) or wanes (spring). Even in consideration of recent habitat-use and distribution shifts, Vineyard Wind 1 would still be installing monopile foundations when the presence of North Atlantic right whales is expected to be relatively lower.

Given this year-round habitat usage, and recognizing that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, NMFS is requiring a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable. These mitigation measures (e.g., seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions, e.g., through sound reduction using attenuation systems and reduced temporal overlap of project activities and North Atlantic right whales. This would help further ensure that the takes by Level B harassment that are estimated to occur would not affect reproductive success or survivorship of individuals through detrimental impacts to energy intake or cow/calf interactions during migratory transit.

As described in the Description of Marine Mammals in the Area of Specified Activities section, the Vineyard Wind Offshore Wind Project is being constructed within the North Atlantic right whale migratory corridor BIA, which represents areas and months within which a substantial portion of a species or population is known to migrate. The area over which North Atlantic right whales may be harassed is relatively small compared to the width of the migratory corridor. The width of the migratory corridor in this area is approximately 210.0 km (while the width of the Lease Area, at the longest point at which it crosses the BIA, is approximately 14.5 km). North Atlantic right whales may be displaced from their normal path and preferred habitat in the immediate activity area (primarily from pile driving activities), however, we do not anticipate displacement to be of high magnitude (e.g., beyond a few kilometers); therefore, any associated bio-energetic expenditure is anticipated to be small. Although North Atlantic right whales may forage in the LIA, there are no known breeding or calving areas within the LIA. Prey species are mobile (e.g., calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the LIA. Therefore, any

impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from January 1 through May 31 when North Atlantic right whale abundance in the LIA is expected to be highest and individuals are more likely to be engaged in foraging behaviors. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through SNE from calving grounds to primary foraging grounds (e.g., Cape Cod Bay).

Moreover, NMFS expects that the severity of any take of North Atlantic right whales would be reduced due to the other mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. Foundation installation may only begin in the absence of North Atlantic right whales (based on visual and passive acoustic monitoring). Once foundation installation activities have commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, foundation installation activities must be shut down if a North Atlantic right whale is sighted at any distance or acoustically detected at any distance within the PAM monitoring zone, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown would be required anywhere if North Atlantic right whales are detected within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the mitigation measures (e.g., delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would expose themselves to very high noise levels. This is because typical observed whale behavior demonstrates likely avoidance of harassing levels of sound where possible (Richardson *et al.*, 1985).

The clearance and shutdown measures are most effective when detection efficiency is maximized, as the measures for North Atlantic right whales are triggered by a sighting or acoustic detection. To maximize detection efficiency, NMFS requires the combination of PAM and visual observers. NMFS also requires communication protocols with other project vessels and other heightened awareness efforts (e.g., daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy will increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for impact pile driving will provide an opportunity for whales to move away from the source if they are undetected, reducing received levels.

As described above, no serious injury or mortality, or Level A harassment of North Atlantic right whales is anticipated or authorized. Extensive North Atlantic right whale-specific mitigation measures (beyond the robust suite required for all species) are expected to further minimize the amount and severity of Level B harassment.

Given the documented habitat use within the LIA, the seven instances of take by Level B harassment could include seven individual whales disturbed on 1 day each within the year, or it could represent a smaller number of whales impacted on 2 or 3 days, should North Atlantic right whales briefly use the LIA as a “stopover” site and stay or swim in and out of the LIA for more than day. At any rate, any impacts to North Atlantic right whales are expected to be in the form of lower level behavioral disturbance, given the extensive mitigation measures.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Vineyard Wind 1 activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take (by Level B harassment) anticipated and authorized would have a negligible impact on the North Atlantic right whale.

Fin Whale

The fin whale is listed as endangered under the ESA, and the western North

Atlantic stock is considered both depleted and strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

This IHA authorizes up to 7 takes, by harassment only, over the 1 year period. The maximum allowable take by Level A harassment and Level B harassment, is 1 and 6, respectively (which equates to approximately 0.10 percent of the stock abundance, if each take were considered to be of a different individual). Given the close proximity of a fin whale feeding BIA (2,933 km²) from March through October, and that southern New England is generally considered a feeding area, it is likely that the seven takes could represent a few whales taken 2–3 times during the specified activity under this IHA.

Level B harassment is expected to be primarily avoidance of the LIA where foundation installation is occurring and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. We anticipate any potential PTS would be minor (limited to a few dB), and any PTS or TTS would be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of fin whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Fin whales are present in the waters off of New England year-round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras, North Carolina in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2023). In SNE, fin whales densities are highest in the spring and summer months (Kraus *et al.*, 2016; Roberts *et al.*, 2023) though detections do occur in spring and fall (Watkins *et al.*, 1987; Clark and Gagnon, 2002; Geo-Marine, 2010; Morano *et al.*, 2012; Van Parijs *et al.*, 2023). However, fin whales feed more extensively in waters in the Great South Channel north to the Gulf Maine into the Gulf of St. Lawrence, areas north and east of the LIA (Hayes *et al.*, 2023).

As described previously, the LIA is in close proximity (approximately 8.0 km; 5.0 mi) to a small fin whale feeding BIA

(2,933 km²) east of Montauk Point, New York (figure 2.3 in LaBrecque *et al.*, 2015) that is active from March to October. Foundation installations have seasonal work restrictions (*i.e.*, spatial and temporal) such that the temporal overlap between the specified activities and the active BIA timeframe would exclude the months of March, April, and May. A separate larger year-round feeding BIA (18,015 km²) located to the east in the southern Gulf of Maine does not overlap with the LIA and is located substantially further away (approximately 76.4 km (47.5 mi)), and would thus not be impacted by project activities. We anticipate that if foraging is occurring in the LIA and foraging whales are exposed to noise levels of sufficient strength, they would avoid the LIA and move into the remaining area of the feeding BIA that would be unaffected to continue foraging without substantial energy expenditure or, depending on the time of year, travel to the larger year-round feeding BIA.

Given the documented habitat use within the area, some of the individuals taken would likely be exposed on multiple days. However, low level impacts are generally expected from any fin whale exposure. Given the magnitude and severity of the impacts discussed above (including no more than seven takes over the course of the IHA, and a maximum allowable take by Level A harassment and Level B harassment of one and six, respectively) and in consideration of the required mitigation and other information presented, Vineyard Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies Distinct Population Segment (DPS) of humpback whales is not listed as threatened or endangered under the ESA but the Gulf of Maine stock, which includes individuals from the West Indies DPS, is considered strategic under the MMPA. However, as described in the Description of Marine Mammals in the Area of Specified Activities section, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence

of human interaction (vessel strike or entanglement). Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals and the takes of humpback whales by Level B harassment authorized would not exacerbate or compound the effects of the ongoing UME.

This IHA authorizes up to six takes by harassment only, over the 1 year period. The maximum allowable take by Level A harassment and Level B harassment is two and four, respectively (this equates to approximately 0.43 percent of the stock abundance, if each take were considered to be of a different individual). Given that feeding is considered the principal activity of humpback whales in southern New England waters, these takes could represent a few whales exposed two or three times during the year.

In the western North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the U.S. Feeding is generally considered to be focused in areas north of the LIA, including in a feeding BIA in the Gulf of Maine/Stellwagen Bank/Great South Channel, but has been documented off the coast of southern New England and as far south as Virginia (Swingle *et al.*, 1993). Foraging animals tend to remain in the area for extended durations to capitalize on the food sources.

Assuming humpback whales who are feeding in waters within or surrounding the LIA behave similarly, we expect that the predicted instances of disturbance could consist of some individuals that may be exposed on multiple days if they are utilizing the area as foraging habitat. As with other baleen whales, if migrating, such individuals would likely be exposed to noise levels from the project above the harassment thresholds only once during migration through the LIA.

For all the reasons described in the Mysticetes section above, we anticipate any potential PTS and TTS would be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above (including no more than 6 takes over the course of

the 1-year IHA, and a maximum allowable take by Level A harassment and Level B harassment of two and four, respectively), and in consideration of the required mitigation measures and other information presented, Vineyard Wind 1 activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Gulf of Maine stock of humpback whales.

Minke Whale

Minke whales are not listed under the ESA, and the Canadian East Coast stock is neither depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the LIA. As described in the Description of Marine Mammals in the Area of Specified Activities section, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or authorized for this species.

This IHA authorizes up to 1 take by Level A harassment and 28 takes by Level B harassment over the 1-year period (equating to approximately 0.13 percent of the stock abundance, if each take were considered to be of a different individual). As described in the Description of Marine Mammals in the Area of Specified Activities section, minke whales inhabit coastal waters during much of the year and are common offshore the U.S. Eastern Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.*, 2022; Hayes *et al.*, 2023). Spring through fall are times of relatively widespread and common acoustic occurrence on the continental shelf. From September through April, minke whales are frequently detected in deep-ocean waters throughout most of the western North Atlantic (Clark and Gagnon, 2002; Risch *et al.*, 2014; Hayes *et al.*, 2023). Because minke whales are migratory and their known feeding areas are north and east of the LIA, including a feeding BIA in the southwestern Gulf of Maine and George's Bank, they would be more likely to be transiting through (with each take representing a separate individual), though it is possible that some subset of individual whales exposed could be taken up to a few times during the effective period of the IHA.

As previously detailed in the Description of Marine Mammals in the Area of Specified Activities section, there is a UME for minke whales along

the Atlantic coast, from Maine through South Carolina, with the highest number of deaths in Massachusetts, Maine, and New York. Preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. However, we note that the population abundance is greater than 21,000, and the take by harassment authorized through this action is not expected to exacerbate the UME.

We anticipate the impacts of this harassment to follow those described in the general Mysticetes section above. Any potential PTS would be minor (limited to a few dB) and any PTS or TTS would be of short duration and concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of minke whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels relatively shortly after exposure ends. Level B harassment would be temporary, with primary impacts being temporary displacement from the LIA but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 29 takes of the course of the 1-year IHA, and a maximum allowable take by Level A harassment and Level B harassment of 1 and 28, respectively), and in consideration of the required mitigation and other information presented, Vineyard Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

Sei Whale

Sei whales are listed as endangered under the ESA, and the Nova Scotia stock is considered both depleted and strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the LIA, and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or authorized for this species.

The IHA authorizes up to three takes by harassment over the 1-year period. The maximum allowable take by Level A harassment and Level B harassment is one and two, respectively (combined, this annual take (n=3) equates to approximately 0.05 percent of the stock abundance, if each take were considered to be of a different individual). As

described in the Description of Marine Mammals in the Area of Specified Activities section, most of the sei whale distribution is concentrated in Canadian waters and seasonally in northerly U.S. waters, although they can occur year-round in SNE. Because sei whales are migratory and their known feeding areas are east and north of the LIA (*e.g.*, there is a feeding BIA in the Gulf of Maine), they would be more likely to be moving through (*i.e.*, not foraging), and considering this and the very low number of total takes, it is unlikely that any individual would be exposed more than once within the IHA period.

With respect to the severity of those individual takes by Level B harassment, we anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the WTG installation to be the most likely type of response. Any potential PTS and TTS would likely be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the LIA due to the Project's activities would be expected to be temporary.

Given the magnitude and severity of the impacts discussed above (including no more than three takes of the course of the 1-year IHA, and a maximum allowable take by Level A harassment and Level B harassment, of one and two, respectively), and in consideration of the required mitigation and other information presented, Vineyard Wind 1 activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and proposed to be authorized will have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth and we further divide them into the following subsections: sperm whales, dolphins and small whales, and harbor porpoises. These sub-sections include more specific information, as well as conclusions for each stock represented.

No serious injury or mortality is anticipated or authorized. We anticipate that, given ranges of individuals (*i.e.*, that some individuals remain within a

small area for some period of time) and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), a larger subset of these takes are more likely to represent multiple exposures of some number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures of an individual. While we expect animals to avoid the area during foundation installation, their habitat range is extensive compared to the area ensounded during these activities. As such, NMFS expects any avoidance behavior to be limited to the area near the sound source.

As described earlier, Level B harassment may include direct disruptions in behavioral patterns (*e.g.*, avoidance, changes in feeding or vocalizations), as well as those associated with stress responses or TTS. While masking could also occur during foundation installation, it would only occur in the vicinity of and during the duration of the activity, and would not generally occur in a frequency range that overlaps most odontocete communication or any echolocation signals. The required mitigation measures (*e.g.*, use of sound attenuation systems, implementation of clearance and shutdown zones) would also minimize received levels such that the expected severity of any behavioral response would be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low severity. First, while the frequency range of pile driving falls within a portion of the frequency range of most odontocete vocalizations, odontocete vocalizations span a much wider range than the low frequency construction activities planned for the project. Also, as described above, recent studies suggest odontocetes have a mechanism to self-mitigate the impacts of noise exposure (*i.e.*, reduce hearing sensitivity), which could potentially reduce TTS impacts. Any masking, TTS, or PTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration for TTS and masking, and for TTS and PTS, a relatively small degree. Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities. Therefore, there is little likelihood that threshold shift would interfere with feeding behaviors.

The waters off the coast of Massachusetts are used by several

odontocete species. However, none except the sperm whale are listed under the ESA and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S. and the waters off of New England, including the LIA, do not contain any particularly unique odontocete habitat features.

Sperm Whale

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both depleted and strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale across its range (*i.e.*, commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and although the species is listed as endangered under the ESA, there are no current related issues or events associated with the status of the stock that cause particular concern (*e.g.*, no UMEs). There are no known areas of biological importance (*e.g.*, critical habitat or BIAs) in or near the LIA, although Westell *et al.* (2024) found a high number of acoustic detections of sperm whales off the northeastern corner of the Lease Area. No mortality or serious injury is anticipated or authorized for this species.

The IHA authorizes up to two takes by Level B harassment over the 1-year period, which equates to approximately 0.05 percent of the stock abundance. If sperm whales are present in the LIA during any Project activities, they will likely be only transient visitors, although foraging and social behavior may occur in the shallow waters off SNE (Westell *et al.*, 2024). However, the potential for TTS is low for reasons described in the general Odontocete section. If it does occur, any hearing shift would be small and of a short duration. Because foraging is expected to be rare in the LIA, TTS is not expected to interfere with foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than two takes by Level B harassment over the course of the 1-year IHA, and in consideration of the required mitigation and other information presented, Vineyard Wind's activities are not expected to result in

impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and authorized will have a negligible impact on the North Atlantic stock of sperm whales.

Dolphins and Small Whales (Including Delphinids)

The five species and stocks included in this group (which are indicated in table 3 in the *Delphinidae* family) are not listed under the ESA, and nor are they listed as depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the LIA. As described above for any of these species and no UMEs have been designated for any of these species. No serious injury or mortality is anticipated or authorized for these species.

The five delphinid species (constituting five stocks) with takes authorized under the IHA are Atlantic white-sided dolphin, bottlenose dolphin, long-finned pilot whale, Risso's dolphin, and common dolphin. The IHA allows for the total authorization of 3 to 462 takes (depending on species) by Level B harassment, over the 1-year period. Overall, this annual take equates to approximately 0.01 (Risso's dolphin) up to 0.27 (common dolphin) percent of the stock abundance (if each take were considered to be of a different individual, which is not likely the case), depending on the species.

The number of takes, likely movement patterns of the affected species, and the intensity of any Level B harassment, combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the LIA or known to be particularly sensitive to anthropogenic noise. Some TTS can occur, but it would be limited to the frequency ranges of the activity and any loss of hearing sensitivity is anticipated to return to pre-exposure conditions shortly after the animals move away from the source or the source ceases.

Across these species, the maximum number of incidental takes, by Level B harassment (no Level A harassment is anticipated or authorized), authorized ranges between 3 (Risso's dolphin) to 462 (common dolphin). Though the estimated numbers of take are comparatively higher than the numbers for mysticetes, we note that for all

species they are low relative to the population abundance.

As described above for odontocetes broadly, given the number of estimated takes for some species and the behavioral patterns of odontocetes, we anticipate that some of these instances of take in a day represent multiple exposures of a smaller number of individuals, meaning the actual number of individuals taken is lower. Although some amount of repeated exposure to some individuals across a few days within the year is likely, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals.

Overall, the populations of all delphinid and small whale species and stocks authorized for take are stable (no declining population trends). None of these stocks are experiencing existing UMEs. No mortality, serious injury, or Level A harassment is anticipated or authorized for any of these species. Given the magnitude and severity of the impacts discussed above and in consideration of the required mitigation and other information presented, as well as the status of these stocks, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on all of the following species and stocks: Atlantic white-sided dolphins, bottlenose dolphins, long-finned pilot whales, Risso's dolphins, and common dolphins.

Harbor Porpoise

Harbor porpoises are not listed as threatened or endangered under the ESA, and the Gulf of Maine/Bay of Fundy stock is neither depleted nor strategic under the MMPA. The stock is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay of Fundy (between New Brunswick and Nova Scotia). Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury are anticipated or authorized for this stock.

The IHA authorizes up to 113 takes, by harassment only. The maximum allowable take by Level A harassment and Level B harassment is 3 and 110, respectively (combined, this annual take ($n=113$), which equates to approximately 0.19 percent of the stock

abundance, if each take were considered to be of a different individual). Given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

Regarding the severity of takes by Level A harassment and Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses to foundation installation could be of a moderate nature. In response to foundation installation, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, foundation installation is scheduled to occur off the coast of Massachusetts and given alternative foraging areas, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals.

With respect to PTS and TTS, the effects on an individual are likely relatively low, given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, TTS is unlikely to impact hearing ability in their more sensitive hearing ranges or the frequencies in which they communicate and echolocate. We expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in Hayes *et al.* (2022), harbor porpoises are seasonally distributed. During fall (October through November) and spring (April through June), harbor porpoises are widely dispersed from New Jersey to Maine with lower densities farther north and south. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina and lower densities are found in waters off New York to New Brunswick, Canada. In non-summer months they have been seen from the coastline to deep waters (<1800 m; Westgate *et al.*, 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area

during any of the project's construction activities, as demonstrated during European wind farm construction, the time of year in which most work would occur is when harbor porpoises are not in highest abundance, and any work that does occur would not result in the species' abandonment of the waters off of Massachusetts.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, the specified activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated or authorized will have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals and Gray Seals)

The harbor seal and gray seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the LIA. As described in the Description of Marine Mammals in the Area of Specified Activities section, a UME has been designated for harbor seals and gray seals and is described further below. No serious injury or mortality is anticipated or authorized for this species.

For the 2 seal species, the IHA authorizes up to between 30 (harbor seals) and 241 (gray seals) takes, by harassment only. The maximum allowable take for harbor seals by Level A harassment and Level B harassment is 1 and 29, respectively (combined, this take (n=30) equates to approximately 0.05 percent of the stock abundance, if each take were considered to be of a different individual). No takes by Level A harassment are anticipated or authorized for gray seals. The maximum allowable take for gray seals by Level B harassment (241) equates to approximately 0.88 percent of the stock abundance, if each take were considered to be of a different individual). Though gray seals and harbor seals are considered migratory and no specific feeding areas have been defined for the area, while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken a few times annually.

Harbor and gray seals occur in southern New England waters most often from December through April.

Seals are more likely to be close to shore, such that exposure to foundation installation would be expected to be at low levels. Known haulouts for seals occur along the shores of Massachusetts.

As described in the Potential Effects to Marine Mammals and Their Habitat section, construction of wind farms in Europe resulted in pinnipeds temporarily avoiding construction areas but returning within short time frames after construction was complete (Carroll *et al.*, 2010; Hamre *et al.*, 2011; Hastie *et al.*, 2015; Russell *et al.*, 2016; Brasseur *et al.*, 2012). Effects on pinnipeds that are taken by Level B harassment in the LIA would likely be limited to avoidance of the area reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016). Given the low anticipated magnitude of impacts from any given exposure (e.g., temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in the Mitigation section.

As described above, noise from pile driving is mainly low frequency, and while any PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies around 5 kHz where pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.*, 2018). In summary, any PTS and TTS would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Regarding the previously mentioned UMEs, elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. In 2022, a pinniped UME occurred in Maine with some harbor and gray seals testing

positive for highly pathogenic avian influenza (HPAI) H5N1. Neither UME (alone or in combination) provides cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 61,000 and annual mortality/serious injury (M/SI) ($n=339$) is well below PBR (1,729) (Hayes *et al.*, 2023). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 366,400 (Hayes *et al.*, 2023). In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (Hayes *et al.*, 2023). Takes by harassment authorized incidental to Vineyard Wind 1's activities would not be expected to exacerbate or compound the effects of any UME.

Given the magnitude and severity of the impacts of the Vineyard Wind 1 Project discussed above, and in consideration of the required mitigation and other information presented, Vineyard Wind's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and authorized will have a negligible impact on harbor and gray seals.

Negligible Impact Determination

No mortality or serious injury is anticipated to occur or authorized. As described in the analysis above, the impacts resulting from the project's activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect any of the species or stocks through effects on annual rates of recruitment or survival. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and, taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the marine mammal take from the planned activities would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only incidental take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares

the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS is authorizing incidental take by Level A harassment and/or Level B harassment of 14 species of marine mammals (with 14 managed stocks). The estimated number of instances of takes by combined Level A harassment and Level B harassment relative to the best available population abundance is less than one-third for all affected species and stocks (table 1). For 13 stocks, 1 percent or less of the stock abundance is authorized for take by harassment. Specific to the North Atlantic right whale, the estimated amount of take, which is by Level B harassment only (no Level A harassment is anticipated or authorized), is seven, or 2.07 percent of the stock abundance, assuming that each instance of take represents a different individual.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of

IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NOAA GARFO.

There are four marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA that may taken, by harassment, incidental to construction of the project: the North Atlantic right, sei, fin, and sperm whale. NMFS issued a Biological Opinion on September 11, 2020 and reissued the Biological Opinion on October 18, 2021, concluding that the issuance of the 2023 Vineyard Wind IHA is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. The Biological Opinion is available at <https://repository.library.noaa.gov/view/noaa/37556>.

The Permit and Conservation Division requested re-initiation of section 7 consultation with GARFO on the issuance of the Vineyard Wind 1 proposed IHA for Phase 2 of the Vineyard Wind 1 Offshore Wind Project on May 23, 2024. Reinitiation of consultation was triggered due to consideration of updated marine mammal density data which have become available since the 2023 IHA, analysis of SFV data collected during the Vineyard Wind 1 2023 construction campaign, and modified mitigation and monitoring measures. On August 2, 2024, NMFS GARFO issued a Biological Opinion that considered the effects of the remaining activities for the Vineyard Wind 1 Offshore Wind Project, including NMFS Permit and Conservation Division's proposed issuance of an IHA authorizing incidental take of four species of ESA-listed marine mammals, taking into account the reinitiation triggers listed above. NMFS GARFO concluded that the proposed actions were likely to adversely affect but were not likely to jeopardize the continued existence of the North Atlantic right whale, fin whale, sei whale, or sperm whale.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review its proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts to marine mammals in the human environment. Consistent with the regulations published by the Council on Environmental Quality (CEQ) (40 CFR

1506.3(b)), NMFS as a cooperating agency, independently reviewed BOEM's 2021 Vineyard Wind 1 Offshore Wind Energy Project Final Environmental Impact Statement (EIS) and determined it to be sufficient to support the 2023 IHA. The Final EIS and Record of Decision are available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-llc-construction-vineyard-wind-offshore-wind>.

NMFS evaluated the subject IHA to Vineyard Wind 1, for completion of the foundation installation that was unable to be completed during the previous IHA (May 1, 2023 through April 30,

2024), to determine whether supplementation of the Final EIS was required. NMFS determined that changes reflected in this IHA are not substantial relevant to environmental concerns; and there are no substantial new circumstances or information about the significance of adverse effects that bear on the analysis in BOEM's 2021 Final EIS. Therefore, supplementation of the Vineyard Wind 1 Final EIS is not required for this subsequent IHA (40 CFR 1502.9(d)(1)).

Authorization

NMFS has issued an IHA to Vineyard Wind 1 for harassment of small numbers

of 14 marine mammal species incidental to impact pile driving of monopiles during the construction of the Vineyard Wind 1 Offshore Wind Farm Phase 2 offshore of Massachusetts, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 6, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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Part III

Department of Housing and Urban
Development

24 CFR Parts 3280, 3282, 3285, et al.

Manufactured Home Construction and Safety Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 3280, 3282, 3285, and 3286**

[Docket No. FR-6233-F-02]

RIN 2502-AJ58

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Manufactured Home Construction and Safety Standards (MHCSS or the Construction and Safety Standards) by adopting most of the fourth and fifth groups of recommendations made to HUD by the Manufactured Housing Consensus Committee (MHCC). This rule also amends the Manufactured Home Procedural and Enforcement Regulations, the Model Manufactured Home Installation Standards, and the Manufactured Home Installation Program regulations. The MHCC prepared and submitted to HUD its fourth and fifth groups of recommendations to improve various aspects of the MHCSS. HUD reviewed those proposals and drafted a number of proposed revisions to the MHCSS and associated regulations. On July 19, 2022, HUD published a proposed rule detailing these revisions to provide the public an opportunity to comment. The comment period closed on September 19, 2022. This final rule adopts HUD's proposed revisions based upon the MHCC's fourth and fifth groups of recommendations with some minor revisions made in response to the public comments.

DATES: *Effective:* March 17, 2025. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register beginning March 17, 2025. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of July 3, 2014.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202-402-5365 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of

hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:**I. Background**

On August 22, 1974, the President signed the Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 633-2), which contained the National Mobile Home Construction and Safety Standards Act of 1974 (Pub. L. 93-383, 88 Stat. 700; tit. VI; 42 U.S.C. 5401 *et seq.*) (the Act). The Act, which was later renamed the National Manufactured Home Construction and Safety Standards Act of 1974, authorizes HUD to establish and amend the Manufactured Home Construction and Safety Standards (MHCSS) codified in title 24 of the Code of Federal Regulations (CFR), part 3280. The Act was amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106-569, December 27, 2000), which expanded the Act and created the MHCC, a consensus committee responsible for providing HUD recommendations to adopt, revise, and interpret the MHCSS.¹ The MHCSS only applies to the design, construction, and installation of new manufactured homes.

The MHCC held its first meeting in August 2002. The MHCC began considering revisions to the MHCSS afterwards. The MHCC developed its own priorities for preparing proposed revisions for HUD to consider. As the MHCC's efforts proceeded, proposed revisions to the MHCSS were divided into groups of recommendations and provided to HUD in sets.

This rule is based on the fourth and fifth sets of MHCC recommendations to HUD. HUD reviewed the recommendations submitted by the MHCC and made editorial revisions and additions prior to publishing the proposed changes in the **Federal Register** on July 19, 2022 (87 FR 43114). HUD received 49 comments on the proposed rule and made further revisions in response to the public comments. The following is a

¹ The MHCC is composed of twenty-one voting members as provided under section 604(a)(3)(B) of the Manufactured Housing Improvement Act of 2000. The twenty-one members are comprised of seven producers or retailers of manufactured housing, seven persons representing consumer interests, and seven general interest or public officials, which rotate. The current group of seven producers or retailers of manufactured homes can be broken down into two small businesses that manufacture homes, four large businesses that manufacture homes, and one retailer.

discussion of the specific revisions to the MHCSS that were included in the proposed rule and are enacted by this final rule.

II. Changes Made at the Final Rule Stage

In response to public comments and in further consideration of issues addressed at the proposed rule stage, this final rule adopts the proposed rule, published at 87 FR 43114 (July 19, 2022), with the revisions discussed in detail below.

A. Clarification of Fire Sprinkler Requirements for Manufactured Homes

HUD received numerous public comments on the proposed sprinkler standard. The comments addressed topics including whether HUD has statutory authority to impose any fire sprinkler standard, whether the voluntary sprinkler standard would be the first step to HUD imposing a mandatory standard, and whether the HUD regulations would be duplicative of existing local or State regulations. While HUD discusses these comments and its legal authority in greater detail in the public comment section of this preamble, the comments demonstrate that clarification on certain topics would be beneficial. With respect to the fire sprinkler standard itself, the Secretary has not received a recommendation from the MHCC on the imposition of a mandatory fire sprinkler standard and cannot consider or act until that time. In addition, HUD defers to consumer choices, as well as State and local jurisdictions that have the appropriate expertise, to determine the necessity for installing fire sprinkler systems provided the requirements apply to all single family homes, including manufactured homes.

The comments also raised a question of whether the proposed language of § 3280.214 is sufficiently clear for parties with equity in the rule to understand the requirements related to installation of a fire sprinkler system. One commenter suggested a revision to the language by adding "when a manufacturer installs a fire sprinkler system as an optional feature or to meet state or local laws and regulations" after the phrase "Fire sprinkler systems are not required by this subpart; however," in § 3280.214(a)(1). HUD accepted this language and added "as selected by the consumer" after "optional feature" because it provides necessary clarity on commenters' concerns about their obligations under the final rule and was adopted by HUD.

HUD made minor changes in the final rule to clarify and streamline the

language of § 3280.214(e). In § 3280.214(e)(1), HUD moved the phrase “separated from heat sources as required by the sprinkler manufacturer’s installation instructions” from the end of the paragraph and placed it after the first usage of “sprinklers.” This placement clarifies that the standards apply when a fire sprinkler system is selected by the consumer as an optional feature of the home or when required to meet State or local law. In § 3280.214(e)(2), the phrase “located within the distance to a heat source as specified in table 7.5.5.3 of NFPA 13D (incorporated by reference, see § 3280.4)” has been moved and placed immediately after the first usage of “sprinklers.” This new language specifies that the optional sprinklers must be located near the heat source in the described manner.

B. Testing and Certification for Fire Sprinkler Systems

HUD proposed language that initially placed the responsibility of testing and certifying the water supply pressure available for fire sprinklers, if installed as a voluntarily add-on feature, on the installers of manufactured homes. HUD received several comments stating that installers of manufactured homes do not have control over the design and production process and they may lack relevant expertise to meet this obligation. The commenters offered three remedies: (1) HUD could set requirements for factory production to place the obligations on manufacturers; (2) the water supply pressure testing and certification could be completed by a fire protection technician during the installation of the home; or (3) HUD could withdraw the rule.

HUD has revised § 3280.214(q), (r), and (t) to require that this water supply pressure testing and certification be completed by a fire protection technician during the installation of the home upon consideration of the commenter’s suggestions. HUD selected this option because it addresses the concerns raised by the commenters and fire protection technicians have the most relevant and specialized experience needed for testing and certifying the adequacy of water supply pressure for fire sprinkler systems compared to manufactured home installers.

C. Exterior Door Requirements

HUD proposed removing language from § 3280.105 providing that “[d]oor seals are permitted to reduce the opening, either vertically or horizontally, a maximum of one inch” in the proposed rule. HUD received two

comments explaining that door seals on exterior doors were important because they prevent the infiltration of sound, light, drafts, or moisture, among other things, in manufactured homes. The commenters noted that manufacturers would no longer be allowed to account for the reduction that door seals may have on door size and opening measurements because the reference had been removed, which would impact the required sizes of exterior doors. These concerns led the commenters to recommend that the final rule add back the allowance for door seals to § 3280.105(b)(2). The explanations on the necessity of the door seals are compelling and HUD adopts the recommendation, with the exception for at least one exterior door to meet full measured opening requirements for egress and safety purposes.

Commenters also encouraged HUD to consider the related issue of whether the phrase “doorstops” should be included in the current text of § 3280.105(b)(2). Doorstops, similar to door seals, can narrow the opening of exterior doors in some situations. Commenters noted that narrower door openings can interfere with the ability of first responders to transport emergency items such as standard width gurneys through exterior doors and into the home. To address commenters’ concerns about the width of exterior doors, HUD will add the phrase “and/or doorstops” after the term “[d]oor seals” in the final sentence of § 3280.105(b)(2). The language of the revised phrase is “Door seals and/or door stops are permitted to reduce the opening, either vertically or horizontally, by a maximum of one inch.” This language resolves commenters’ concerns and promotes safety in manufactured homes.

D. Definition of Room

HUD received a public comment noting that manufactured homes can burn more quickly than other types of homes because of their open floor plans. HUD has considered how to address the commenter’s concerns and added a definition of “room” to § 3280.105(a)(2)(i). This language clarifies that compliance with the exterior door placement requirements must account for situations like open floor plans where a floor plan may be unclear about the placement of exterior doors in the home. This amendment requires homes with open floor plans to have the required exterior doors in separate rooms.

E. Loose Fill Materials

The proposed change to § 3280.215 provides that membrane penetrations of

fire-resistant-rated walls or ceilings must not lead to reductions of fire-resistance-ratings and that the annular spaces between membrane penetrations and steel electrical boxes must use “cellulose loose-fill or other loose-fill insulation.” A commenter noted that the proposed language could lead manufacturers to understand the rule as requiring or being limited only to cellulose-only insulation even though manufactured homes often use different materials for loose-fill insulation apart from cellulose. HUD considered the concerns and revised § 3280.215(d)(2)(i)(B) to state “where the wall cavity is filled with loose-fill insulation.” This language was provided by the commenter to resolve their concern and clarifies the requirements of the rule.

F. Provision of Operating Instructions

HUD proposed removing the language of § 3280.709(a) requiring that manufacturers leave appliance manufacturer instructions attached to the appliances because HUD had examined the regulatory text and concluded that the language caused confusion when read alongside § 3280.711, which currently states that “[o]perating instructions must be provided with each appliance. The operating and installation instructions for each appliance must be provided with the homeowner’s manual.” In addition, HUD proposed to revise § 3280.711 to allow for the requirements for operating instructions to be met through the provision of permanent Quick Response (QR) codes that would streamline documentation for manufacturers.

HUD received a comment expressing concern that the proposed revision of § 3280.709(a) would conflict with fuel gas installation code requirements and safety standards by allowing the provision of a single set of instructions. HUD has revised the language of the final rule to clarify that § 3280.711 still requires that one copy of the operating instructions for each appliance be provided with the homeowners’ manual and a second copy shall be provided with the appliance unless the appliance has a QR code. Under the rule, a QR code can only replace the copy of the operating instructions that comes with the appliance itself. It may not replace the copy that must be provided with the homeowners’ manual.

G. ASCE/SEI 7–05 Standard

HUD proposed updating ASCE 7–88 to ASCE 7–05, which would require amending the wind speed references used to design manufactured homes in

Wind Zones II and III from “fastest mile” to “three-second gust” parameters. HUD supported the proposed wind speed references by completing a general comparison of ASCE 7–88 and ASCE 7–05, followed by an in-depth analysis to determine comparable and equivalent wind speeds for Wind Zones II and III that align with the “three-second gust” wind speed methodology and terminology employed in ASCE 7–05, instead of the “fastest mile” approach utilized in ASCE 7–88. HUD performed two different methods of analysis to determine revised windspeeds. The first analysis reviewed the HUD wind speed/zone map with the wind speed map in ASCE 7–05, to verify that a manufactured home would be subject to comparable wind speeds if designed using ASCE 7–05. The second used the prescriptive wind pressures shown in the Table of Design Wind Pressures under § 3280.305 as a baseline to perform a series of iterative calculations to determine wind speeds that would produce similar wind pressures for Wind Zones II and III.

HUD received numerous comments on the potential impact of implementing ASCE 7–05 as the appropriate standard, which HUD fully discusses in the public comment section. These concerns ranged from the ASCE 7–05 imposing more onerous requirements than the current standards, the ASCE 7–05 examining non-existent or obsolete wind speeds, the costs of compliance with the ASCE 7–05, and the lack of consideration of high wind prone regions in the Exposure D definition. These concerns led HUD to return this recommendation to the MHCC for reconsideration in light of the identified issues. Updating the ASCE reference standard is not appropriate without updating several sections in the MHCSS, including the values in the Table of Design Wind Pressures in § 3280.305(c)(1)(ii)(B), the Wind Speed Map and geographic boundaries identified in § 3280.305(c)(2) and (4), and references to Exposure D, which require further analysis and consideration by the MHCC before HUD can update the ASCE 7 reference standard. These concerns have led HUD to return this recommendation to the MHCC for reconsideration in light of the identified issues.

H. Number of Dwelling Units

HUD proposed amending the definition of dwelling in § 3280.2 to include “any structure that contains one to a maximum of three dwelling units, designed to be permanently occupied for residential living purposes.” HUD sought public comment on this

provision, specifically requesting feedback on the benefits and challenges if a four-unit maximum were considered and how any conflict with differing State maximums would be handled. HUD received numerous comments, which are discussed in detail in the comment section, but consideration of the comments led HUD to increase the limit to four units for the definition of multi-dwelling unit manufactured homes in § 3280.2 as requested by the commenters.

I. Required Branch Circuits

HUD made several revisions to § 3280.805(a)(1) in the final rule. HUD added the phrase “each story of” to the final rule language to accommodate dwelling units that may have more than one story. HUD moved the phrase “number of 15 or 20 ampere lighting circuits” from the end of § 3280.805(a)(1) to the beginning of the sentence to clarify the method of calculation. HUD also provided an illustrative example to demonstrate how the formula would be used to calculate the number of lighting circuits, but notes this example does not change the underlying method of calculation provided in the proposed rule.

J. Multi-Dwelling Unit Home Addition To Reporting Requirements

When reviewing instances where regulatory text had to be updated to incorporate the change to the number of dwelling units from three to four, HUD identified § 3282.552 as an instance where additional clarity would be beneficial. Specifically, the second sentence of § 3282.552 was amended to require that the relevant manufacturer report include the number of dwelling units. This information is collected at this stage because the manufacturers are in the best situation to collect and report this information.

K. Change to Gas Piping Requirements

As explained earlier, HUD amended the definition of dwelling to include any structure that contains one to a maximum of four dwelling units. This change required HUD to review the remainder of its regulations to ensure the requirements were clear and uniform. Upon review, HUD revised § 3280.705(l)(3) by replacing the phrase “manufactured home structure, upstream of the union” with “dwelling unit structure.” HUD enacted this change to accommodate and reconcile this language with the provisions of multi-dwelling unit manufactured homes.

L. New Fire Resistance Rating Language

HUD proposed that each dwelling unit be separated by wall and floor assemblies having not less than a 1-hour fire resistance except in certain circumstances listed in § 3280.215(a). HUD further proposed that the fire-resistance-rated floor/ceiling and wall assemblies must extend in certain manner unless an exception listed under § 3280.215(b) was applicable. Public commenters noted that the proposed rule mirrored portions of the 2021 International Residential Code (IRC) R302.3 but was missing the exception for homes with installed fire sprinklers. A commenter recommended HUD incorporate the 2021 IRC R302.3 exception 1 into § 3280.215(b)(3).

After reviewing the relevant materials, HUD accepts the commenter’s suggestion and incorporates the recommended language. HUD accepted the proposal because it promotes uniformity between the MHCSS and 2021 IRC R302.3. It also provides an avenue for potential cost reduction where automatic fire sprinklers are installed in each dwelling unit. The exception, found at § 3280.215(b)(3), provides an allowance for multi-dwelling unit manufactured homes equipped with automatic fire sprinklers in each dwelling unit to reduce a fire resistance rating of walls and floors from a 1 hour fire resistance rating to a ½ hour fire resistance rating.

M. AAMA/WDMA/CSA 101/I.S.2/A440–17

HUD proposed amending the testing standards in §§ 3280.403, 3280.404, and 3280.405. Specifically, HUD proposed revising the AAMA 1701.2 from the 1995 version to the 2012 version, the ANSI Z97.1 from the 2004 version to the 2009 version, the AAMA 1702.2 from the 1995 version to the 2012 version, and the AAMA/WDMA/CSA 101/I.S.2/A440–08 North American Fenestration Standard (NAFS) to the AAMA/WDMA/CSA 101/I.S.2/A440–17. HUD further proposed using the AAMA/WDMA/CSA 101/I.S.2/A440–17 as an alternative compliance method for the sections of the MHCSS that govern windows, sliding glass doors, skylights, egress windows, and swinging exterior passage doors.

HUD received numerous comments about the proposed amendment to adopt the 2017 version of AAMA/WDMA/CSA 101/I.S.2/A440 at § 3280.4(s)(6). The comments stated that HUD adopting the AAMA/WDMA/CSA 101/I.S.2/A440–17 would make certification of compliance more difficult and would increase costs to consumers without providing value

in exchange. They recommended that AAMA/WDMA/CSA 101/I.S.2/A440–08 or AAMA/WDMA/CSA 101/I.S.2/A440–11 be adopted rather than the proposed change.

After reviewing the comments and the MHCC's recommendations, HUD has decided to reject the commenters' recommendations. In March 2016 (Log 140), the MHCC recommended that HUD adopt the 2011 version. In December 2017 (Log 201), the MHCC recommended that HUD adopt the 2017 version of the AAMA/WDMA/CSA 101/I.S.2/A440. The MHCC explained that the AAMA/WDMA/CSA 101/I.S.2/A440–08 reference standard was significantly outdated and should be updated to the 2017 version. This recommendation, when considered alongside the absence of major differences between the 2011 and 2017 standards, has led HUD to conclude the AAMA/WDMA/CSA 101/I.S.2/A440–17 standard would not make certification more difficult or impose increased costs on consumers. HUD incorporated the 2017 version of the AAMA/WDMA/CSA 101/I.S.2/A440 in this final rule to ensure manufactured homes are constructed using more modern, relevant, and effective technologies and materials.

N. Change to Water Heater Language

HUD proposed amending § 3280.709(a) and (g). HUD received public comments suggesting that related language in § 3280.709(h) be amended to account for technology changes around water heaters. Specifically, the commenters recommended that the requirement for drain pans should be revised to facilitate the use of tankless water heaters. The technological advances described by the commenters, as well as the fact that manufactured homes often do not have a storage-type water heater, have led HUD to conclude that amending § 3280.709(h) is appropriate. HUD has wholly accepted the proposed language provided by the commenters, which adds the phrase “storage tank” to the current language of § 3280.709(h).

O. Use of Treated Wood in Exterior Applications Only

HUD proposed revising § 3280.304(a) to state that “[d]imension and board lumber must not exceed 19 percent moisture content at the time of installation, except that treated lumber used for exterior purposes only may have a moisture content exceeding 19 percent.” In the public comment stage, a commenter explained that the proposed language could be improved by adding the phrase “and does not

extend into the main home construction” after the word “only” in § 3280.304(a). HUD accepted this recommendation in the final rule without change because the language allows flexibility with respect to porch designs with treated lumber that extend into the main roof cavity and does not undermine the remainder of the language when engaging in this change. The added language prevents the use of treated lumber in areas that are not exposed to the elements addressing durability concerns and consistent with the intended use of the treated lumber in exterior areas only.

P. Non-Update of UL 1995–11 Standard

HUD is not updating the UL 1995 standard in the final rule because the standard was withdrawn and replaced by UL 60335–2–40 on January 1, 2024. UL 60335–2–40 has been incorporated into the final rule in §§ 3280.4 and 3280.703. As a result, UL 1995 has been removed from this rule and the regulations because the standard is no longer relevant.

Q. Changes To Ensure Uniformity in Regulatory Text

HUD made several non-substantive cross-cutting changes to the regulatory text to ensure the language of the final rule was uniform and not confusing. In § 3280.103(c)(3), HUD changed the phrase “mechanical ventilation” to “a local exhaust system” to ensure consistency between paragraphs (c)(2) and (3). HUD changed § 3280.214(o)(3) by revising the single mention of “Allowable Pressure” to “Available Pressure,” which promotes consistency between paragraphs (o)(2) and (3). These changes do not change the substance of the regulations, instead merely clarifying certain language.

R. Restructuring of IBR Standards

The final rule restructures a portion of the incorporation by reference (IBR) section by relisting fifteen standards from their ANSI identifier to their CSA Group identifier. Although the standards are now listed under the CSA Group's header in 24 CFR 3280.4(r), manufacturers must still comply with the listed ANSI-specific standard that is jointly accredited with the CSA Group standard. Next to each CSA Group listing is the relevant ANSI standard to which compliance is required.

S. Six Month Implementation Window

A number of commenters requested that HUD extend the deadline for enforcement because the rule updates 74 standards, implements 16 new standards, and has several regulatory

text changes. Commenters provided various solutions from a year extension to bifurcated effective and enforcement dates. HUD has established a six-month delayed effective date for the rule consistent with section 604(c) of the Housing and Community Development Act of 1974 (Pub. L. 93–383, 88 Stat. 701, tit. VI, sec. 601–628; 42 U.S.C. 5401 *et seq.*), which is sufficient time to allow manufacturers to comply with the changes and new standards in the final rule. HUD does not want to further delay implementation as these updates are overdue in many cases and should reap cost-saving benefits to manufacturers and consumers. HUD declines to implement a bifurcated effective versus enforcement date timeline because bifurcation could lead to confusion about deadlines and difficulties with enforcement.

T. Severability

It is HUD's intention that the provisions of the proposed rule operate independently of each other. This intention is demonstrated by the structure of this rule, which is comprised of numerous distinct and discrete changes to standards that function independently of each other. As one example, the changes to insulation, room dimensions, exterior doors, and fire safety ratings are independent from one another and can be independently enacted if any one or more of the aforementioned changes are invalidated. In the event that any provision of this rule is declared invalid or stayed, it is HUD's intent that those provisions be severable and that those unaffected remain valid. Additionally, it is HUD's intention that any provision(s) of the rule not affected by a declaration of invalidity or stayed shall be severable and remain valid. HUD concludes it would separately adopt all of the provisions contained in this rule through separate rulemaking if provisions were declared invalid or stayed.

III. Public Comment Summary

The public comment period for this notice closed on September 19, 2022, and HUD received 49 comments. Several comments were identical in substance and two commenters submitted duplicative comments. The comments came from non-profits, independent consultants, private citizens, State and city housing administrations, national trade associations, and product certification organizations.

General Support

Numerous commenters supported updates to the standards, noting that such efforts enable the industry to use the latest innovations to provide high-quality, affordable manufactured homes. Many commenters specifically supported the changes related to accessible shower compartments and tankless water heaters. Other commenters applauded the express authorization of multi-dwelling unit manufactured homes. Commenters supported the revised exterior door requirements to facilitate open floor plans, moisture barriers, and higher moisture content of treated lumber in exterior additions.

One commenter expressed support for revising § 3280.403 to add the ISO/IEC 17065:2012 accrediting requirement for product certification of fenestration products and the requirement that windows and doors display their certification from an independent ISO/IEC 17065:2012 accredited product certification. Another commenter expressed support for the changes related to steeper roof pitch designs.

HUD Response: HUD thanks the public commenters for their support of these provisions. HUD agrees that by incorporating by reference updated construction standards, the rule will encourage the industry's use of the latest innovations and continue to support the construction of high-quality, affordable, manufactured homes.

Obligations Placed on Installers of Manufactured Homes

One commenter expressed concern about obligations the proposed rule would place on installers of manufactured homes. The commenter recommended that HUD set these requirements as part of factory production procedures, rather than installation procedures, because the rule places more obligations on manufacturers. The commenter offered this recommendation because manufacturers have more relevant expertise and greater control over the design and production process, as well as installers' inability to do a comprehensive evaluation of the construction.

Other commenters raised similar concerns related to the fire sprinkler system standards. These commenters noted that the installation and testing of fire sprinkler systems are typically done by licensed professionals specializing in such systems, not manufactured home installers. The commenters disagreed with HUD's decision to place responsibility on manufactured home

installers to test and certify the sprinkler system on site to ensure availability of adequate water supply. One commenter recommended that any proposed regulations regarding the installation of the fire sprinkler system be withdrawn from the rule, while the other commenter provided no suggested remedy.

HUD Response: HUD appreciates these comments. The testing and certification requirements imposed under § 3280.214(q) serve to verify that the minimum water supply pressure requirements needed to properly operate the fire sprinkler systems are met after the home is installed. Upon reconsideration, HUD has revised the final rule to require that this water supply pressure testing and certification be completed by a fire protection technician during the installation of the home. HUD selected this option to address the concerns raised by the commenters, as fire protection technicians will have the most relevant and specialized experience needed for testing and certifying the adequacy of water supply for fire sprinkler systems, compared to manufactured home installers. However, nothing in this rulemaking should be interpreted to change the requirement that home installation is the responsibility of the installer and, as applicable, home installations must meet HUD Model Manufactured Home Installation Standards (24 CFR part 3285) at a minimum and may also be required to satisfy State and local installation requirements with permits as may be required consistent with § 3286.409(c).

Fire sprinkler systems are not required by § 3280.214, but when a manufacturer incorporates a fire sprinkler system into the design and construction of a manufactured home, as an optional feature selected by the consumer, design approval agencies must review and approve plans to ensure that the system meets the technical requirements established by the MHCSS. In-plant inspection agencies must ensure that manufacturers follow designs and quality assurance procedures that result in compliance with the approved designs and to the standards when the standard is specific. Manufacturers are responsible for providing installation instructions for the fire sprinkler systems, including specific instructions for the inspection and testing of the system during or after the installation of the home. As the connection of the home to utilities is a matter of installation and in accordance with existing regulations at § 3285.904(b), only qualified personnel familiar with

local requirements are permitted to make utility site connections and conduct tests. Therefore, in this final rule, HUD is only requiring that the installer ensure that the water supply to a fire sprinkler system is verified by a fire protection technician to meet the minimum requirements described on the Fire Sprinkler System Certificate in the home (located next to the data plate).

Exterior Door Requirements

Several comments expressed concern that the entry and corridor width requirements in the proposed rule would be insufficient to facilitate entry by emergency medical services with a gurney stretcher. The commenters recommended that HUD require manufactured homes to have one 36-inch-wide entry door and 36-inch-wide corridors. They indicated that such a requirement would better comport with the International Building Code and the International Residential Code, as well as California State requirements.

One commenter noted that a requirement in the proposed rule that the doorway be 28 inches wide could leave a net clear opening width of only 26 inches after accounting for door stops, hinges, and door thickness. The commenter noted that this could be a problem because ambulance gurneys are generally 24 inches wide.

HUD Response: HUD's proposed rule included a requirement, which continues in this final rule, that one of the two exterior doors of a manufactured home provide a minimum of 32 inch wide by 74 inch high clear opening, which is an increase from the previously codified 28 inch wide requirement. Maintaining the minimum width of 32 inches for one external door addresses the concerns regarding effective emergency response raised by commenters by providing an increased width standard that more easily accommodates the ingress and egress of a standard 24 inch wide gurney while balancing HUD's statutory requirement to consider affordability when establishing Federal minimum standards for manufactured housing. These considerations of cost can, as it does now, result in requirements that may not follow other established building codes.

Door Seal Requirements

Commenters noted that HUD proposed the removal of the reference to door seals in § 3280.105(b)(2). Commenters noted the importance of door seals and that, because the reference had been removed, manufacturers would no longer be

allowed to account for the reduction of the opening that door seals make up. The commenters recommended that door seals be allowed to encroach on opening space and the addition of following sentence: “However, the door stops are permitted to reduce the opening, either vertically or horizontally, by a maximum of one inch.”

HUD Response: HUD proposed removing the mention of door seals in § 3280.105(b)(2). Commenters provided feedback on the proposal, explaining that door seals play a vital role in reducing the infiltration of sound, light, drafts, and moisture in manufactured homes. The final rule added language in § 3280.105(b)(2) to specify that at least one of the exterior egress doors of a manufactured home must provide a minimum of 32 inch wide by 74 inch high clear opening. However, this language allows manufactures to add door stops and door seals to exterior egress doors as long as one exterior egress door does not fall below the minimum of 32 inch wide by 74 inch high clear opening.

HUD is making this change for two reasons. First, the MHCC recommended that at least one egress door have a minimum 32-inch clear width opening for the purpose of improving accessibility. Second, many manufactured housing units subject to the MHCSS may be provided to entities that administer programs or activities that receive Federal financial assistance from HUD. When this is the case, those entities would be subject to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and HUD’s implementing regulations at 24 CFR part 8, including the requirements at 24 CFR 8.22 that address accessibility in new construction. Similarly, if manufactured housing units are provided to a State or local government for a program or activity of a State or local government, the housing would be covered by Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and its implementing regulations at 28 CFR part 35, including the requirements at 28 CFR 35.151(c)(3) that address accessibility in new construction. To facilitate compliance by these entities with these requirements, HUD is requiring that manufacturers produce manufactured housing units that meet the accessibility standards provided in 24 CFR part 8 and/or 28 CFR 35.151, as applicable. The Uniform Federal Accessibility Standards (UFAS) (see 24 CFR 8.32) or the 2010 ADA Standards for Accessible Design with the Deeming Notice, 79 FR 29671 (May 23, 2014), are currently used for compliance with

section 504. The 2010 ADA Standards for Accessible Design are used for compliance with the ADA. Both standards prohibit doorways below 32 inches clear width. See UFAS 3.13.5 and 2010 ADA Standards 404.2.3. HUD notes that the section 504 and ADA requirements are not applicable to any individual or buyer that obtains Federal Housing Administration financing when purchasing a manufactured housing unit, if the unit is not otherwise covered by section 504 or the ADA.

Clarity on Fire Sprinkler Requirements

One commenter found § 3280.214 of the proposed rule unclear about the circumstances in which fire sprinklers are required and read the proposed rule as omitting fire sprinkler requirements for what it referred to as multi-family manufactured homes. The commenter urged HUD to mandate fire sprinklers.

HUD Response: The final rule does not require the installation of fire sprinkler systems in manufactured homes. Multi-dwelling unit manufactured homes are single family structures and should not be referred to as multifamily dwellings. The final rule only establishes minimum requirements for the design and installation of a fire sprinkler system if a manufacturer chooses to install one as an optional feature selected by the consumer, or to meet State or local mandates for fire sprinkler systems in new single family homes. These minimum requirements are intended to create uniformity in manufactured home construction. HUD has no present reason to consider a mandatory fire sprinkler standard unless it is recommended by the MHCC to the Secretary.

Necessity of Fire Sprinkler Standard

Several commenters raised concerns about the necessity of the fire sprinkler standard in the proposed rule. These commenters stated that the NFPA 13D is an adequate private-sector voluntary sprinkler standard for manufactured homes and rejected the need for HUD standards. They also raised several unique reasons for their disagreement with the proposed rule.

One commenter stated that manufactured housing units have additional fire protective features beyond what is provided in industrialized or site-built housing. As examples, the commenter referred to requirements related to limited combustible material around the cooking range, which it noted was the number one source of home fires, as well as the better flame-spread limitations in manufactured homes, which reduce the need for fire sprinkler

requirements. For example, the compartments for the water heater and furnace must have a flame-spread rating no greater than 25 and manufactured housing requires two exterior doors. The commenter also noted that ceiling finishes in manufactured homes must have a flame-spread rating equal to or less than 75, as compared to 200 or less in conventional homes.

HUD Response: HUD appreciates these comments and agrees that fire safety and prevention considerations are crucial in the design and construction of manufactured homes. The existing fire safety standards in the MHCSS have contributed significantly to manufactured homes being safer and more fire-resistant than the mobile homes built prior to the MHCSS. When examining this issue, HUD must also consider the balance between safety and affordability when establishing Federal standards and at this time defers to consumer choices to determine the necessity for installing fire sprinkler systems in residential homes. HUD believes that currently consumers have the right to choose fire sprinklers for their protection of life and property, but also recognizes the need to balance considerations of cost and effectiveness when preserving affordability for manufactured housing consumers. The final rule does not require fire sprinkler systems in manufactured homes but establishes standards when a design incorporates them. The standards under § 3280.214 are based on the NFPA 13D for the design and construction, and in-plant water pressure testing. The provisions for testing the water supply at the site and any other installation-related requirements for fire sprinkler systems are minimum requirements that must be addressed in manufacturer installation instructions. However, the installation will be inspected under requirements of 24 CFR parts 3285 and 3286, and the water supply sufficiency shall be certified by a fire protection technician. The Manufactured Home Construction and Safety Standards, often referred to as MHCSS, provides a minimum requirement that can support manufacturers, promote uniformity in manufactured housing construction, and preserve affordability, particularly when manufactured homes are constructed for States or jurisdictions that require fire sprinkler systems.

Authority To Impose a Fire Sprinkler Standard

One commenter questioned the necessity of the standard and whether HUD exceeds the statutory authority for the proposed rule’s standards related to the installation of fire sprinkler systems.

The commenter cited the “manufactured home safety” definition and stated HUD must determine, prior to the adoption of standards, there is the existence of “any unreasonable risk of death or injury to the occupant(s) of a manufactured home.” The commenter asserts that the absence of fire sprinklers has never been determined to be an unreasonable risk within the HUD fire safety standards. The commenter explained that HUD could not now purport to view fire sprinkler standards as necessary to “protect against any unreasonable risk of death or injury” given that the proposed rule declines to mandate fire sprinkler systems, but rather sets forth standards with which a sprinkler system, if installed, must comply.

The commenter also stated that a National Fire Protection Association (NFPA) report and associated update stated fire sprinklers are not necessary to prevent against “unreasonable risk of death or injury” and that manufactured homes built in compliance with HUD’s existing fire safety standards have lower incidence of fire and fire injuries, comparable fire death rates, and better contained fires than other comparable dwellings.

Given that fire sprinkler systems are not necessary to prevent “unreasonable risk of death or injury,” the commenter concluded, specific standards for optional fire sprinkler systems cannot be necessary either. It recommended that HUD remove the proposed standard from the final rule.

HUD Response: HUD appreciates the commenter’s thoughts and comment but does not agree with its conclusion or analysis. Congress directed HUD to develop and promulgate standards that reduce the number of personal injuries and deaths in manufactured homes, as well as improve the quality and durability of manufactured homes, by enacting the highest standards of protection. These standards must also be appropriate and reasonable, as explained by section 604(a)(1)(A)(i) through (iii) of the Manufactured Housing Improvement Act of 2000. Neither the assertion that this rule does not require the installation of fire sprinkler systems in all manufactured homes or a report that manufactured homes built in compliance with HUD’s existing fire safety standards have lower incidence of fire and fire injuries, comparable fire death rates, and better contained fires than other comparable dwellings, addresses the authority HUD has to establish standards in accordance with the consensus standards development process. Based upon MHCC recommendations, HUD has

determined the fire sprinkler system standards are essential for uniformity and enforcement, as well as reasonable specifications that are consistent with approved home designs for the installation of a manufactured home to ensure proper siting and the joining of all sections of the home.

The Proposed Regulation Is Duplicative Because Existing Regulations Preempt State and Local Requirements for Sprinkler Systems

One commenter claimed that the proposed fire sprinkler standard recommendation by the MHCC was substantially based on the idea it was necessary to ensure the preemption of State and local fire sprinkler standards under 42 U.S.C. 5403(d). The commenter believed that State and local standards were already preempted without the need for the proposed standard.

The commenter called attention to the text of 42 U.S.C. 5403(d), which provides, in part, that Federal preemption “shall be broadly and liberally construed.” Prior HUD analysis, including a 1995 legal opinion, relied on a narrow construction of the “same aspect of performance test” to conclude that the Federal standards fail to preempt State and local sprinkler mandates because they lack specific requirements relating to sprinkler systems. The commenter claimed that the statutory text as modified by the “2000 reform law” invalidated HUD’s prior legal analyses and substantially enhanced the scope of Federal preemption under the Act. The commenter also attached a 1989 letter from a former Director of HUD Manufactured Housing and Construction Standards Division to the fire chief of Oklahoma City, which it cited for the proposition that HUD had previously and correctly determined that local standards were preempted under the less rigorous preemption language of the original 1974 Act.

The commenter went on to state that under a “broad and liberal” construction of Federal preemption in the Act of the “same aspect of performance” test, preemption analysis should focus on the Federal objective to be achieved and the Federal purposes of the Act. The commenter explained the result of this test is that existing HUD standards preempt State and local laws and do not allow additional or different equipment or measures required by “a state or locality.” The commenter goes on to conclude that existing regulations already meet the purpose of preventing “unreasonable risk of death or injury” and so there is already no room for State

and localities to require additional measures. Rather, such measures would only unnecessarily increase the cost of manufactured homes.

HUD Response: HUD acknowledges and appreciates the commenters concerns. HUD’s existing regulations regarding fire safety standards do not address the requirement or the standards of fire sprinklers. The current regulations do not prohibit State and local jurisdictions from promulgating their own fire sprinkler standards. Although fire sprinklers are voluntary, should they be incorporated into the manufacturer’s design of a manufactured home, HUD’s Construction and Safety Standards as promulgated through this Final Rule, will preempt State and local requirements applicable to the same aspects of construction pursuant to section 604(d) of the Housing and Community Development Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, and 24 CFR 3282.11(a), just as any other standard.

Potential Imposition of Mandatory Fire Sprinkler Standards

One commenter suggested that the fire sprinkler standards in the proposed rule will likely increase the probability that a high-cost sprinkler system will be required in all manufactured homes. The commenter asserts that the proposed standards are characterized as regulatory “requirements” and that, when triggered, would subject the performance of any sprinkler system to Subpart I procedures and enforcement for the life of the home, which would impose all the corresponding investigation, documentation, and notice and recall requirements. The commenter concluded that the fire sprinkler standards should be eliminated from the final rule.

HUD Response: As noted earlier, the Manufactured Housing Improvement Act of 2000 established the MHCC and requires the establishment of construction and safety standards in accordance with the consensus standards development process. Under this Act, all proposed changes to the MHCSS must go through an MHCC-led consensus process to allow for thorough review and evaluation of proposed changes. Generally, proposed changes to HUD standards must be submitted and reviewed for recommendation to the Secretary before HUD can consider or implement changes to the MHCSS by notice and comment rulemaking. HUD has no present basis and has not received a recommendation from the MHCC to mandate fire sprinkler systems

in all manufactured homes. Therefore no mandate by HUD is being proposed.

Under the final rule, HUD fire sprinkler design and construction standards preempt State and local regulations when manufacturers construct a home designed with a fire sprinkler system. When a manufacturer produces a unit with a fire sprinkler system, Subpart I enforcement of the MHCSS will be implemented as applicable.

Federal Fire Sprinkler Standards Could Lead to State Imposed Mandates

Several commenters stated that the provisions addressing fire sprinkler systems in the proposed rule would encourage State and local government to step in and require sprinkler systems in manufactured homes or otherwise increase regulation. A commenter noted that this would reverse the current trend in which jurisdictions focus on the model International Residential Code.

One commenter articulated concern that the voluntary language of the fire sprinkler requirements, which provides standards only when a manufacturer installs a system but does not require a manufacturer to do so, would weaken the rule of preemption and lead other entities to believe they may enforce this voluntary requirement in manufactured homes. The commenter explained that, currently, a fire suppression systems requirement by a local authority applies to all residential dwellings and is non-discriminatory. The commenter further explained that, under current Pennsylvania law, fire suppression systems are not required in one or two-family dwellings but are required in multi-family dwellings.

Another commenter asserted that HUD holds the position that State and localities can require fire sprinkler systems although it did not believe that the MHCSS lacked preemptive effect. While the commenter disagreed with the need for a requirement for fire sprinkler systems, the commenter explained that, given the proposed standard, HUD should now take the position that its fire sprinkler standards preempt State and local requirements so that manufacturers do not have to adhere to a patchwork of State and local requirements.

Several commenters echoed the recommendation that HUD explicitly adopt the position that its fire sprinkler standard, as laid out in the proposed rule, will preempt current or future States or local design, testing, or installment mandates. One commenter specifically advised that HUD add a statement to § 3280.214 to reflect preemption of State and local

requirements as stated in § 3282.11. Another commenter recommended that HUD adopt a stance that would permit State and local regulations, but only insofar as they would require the implementation of HUD's otherwise-voluntary fire sprinkler system. The commenter explained that this would allow for localized fire sprinkler requirements without creating disparate jurisdiction-by-jurisdiction sprinkler design requirements. Other commenters concerned about the standard's preemptive effect instead recommended that HUD remove the proposed voluntary fire sprinkler standard and any other regulations regarding the installation of fire sprinkler systems.

HUD Response: HUD thanks the public for these comments. The amendments to MHCSS in this final rule would preempt State and local requirements to the extent that State and local fire sprinkler requirements conflict with Federal standards pursuant to 24 CFR 3282.11(a).

HUD also notes that it must consider the balance between safety and affordability when establishing Federal standards and defers to consumer choices to determine the necessity for installing fire sprinkler systems in residential homes. Fire sprinkler systems are not federally mandated for site-built residential homes, as even the national life safety code, NFPA 101, is only enforceable if a municipality has implemented it. HUD asserts that consumers have the right to choose fire sprinklers for the protection of their life and property, but also recognizes the need to balance considerations of cost and effectiveness when preserving affordability.

HUD understands the commenters' concern. However, there is no indication to HUD that the rule would encourage State and local government to step in and require sprinkler systems in manufactured homes or otherwise increase regulation. Consequently, this issue is too speculative for HUD to meaningfully consider in the final rule.

A Voluntary Fire Sprinkler System Insufficiently Protects Residents

One commenter expressed concerns that the proposed fire sprinkler system would fail to protect residents of manufactured homes from personal injuries and protect the public from unreasonable risk, as is required by statute and recommended that HUD require fire sprinkler systems in all new manufactured homes. The commenter believed that home fires present an unreasonable risk of death or injury in manufactured homes and that fire sprinklers are the most effective means

to control such risk, especially in multiunit manufactured housing. The commenter cited the prevalence of fire deaths and injuries in the home and explained that most such casualties occurred in one-and-two family dwellings, including manufactured homes. It stated that, although injury rates from home fires were lower in manufactured homes, death rates were higher. The commenter expressed particular concern for elderly individuals, who have higher injury and death rates from home fires, in part because of factors like decreased mobility and other impairments. The commenter noted that demographic trends suggest that more older individuals will occupy manufactured homes in the United States over time. The commenter referenced the growing elderly population combined with the growing percentage of the population living in manufactured homes. The commenter also noted that manufactured housing is more prevalent in rural areas and in the South, areas with higher fire fatality rates.

The commenter believed these factors to create an unreasonable risk of death or injury and stated that automatic fire sprinklers would be an effective means of controlling that risk. The commenter cited an analysis of home fire data which found that in fires where automatic fire sprinklers were present, civilian deaths were 89 percent lower and injuries were 27 percent lower. It further suggested, based on the 53 percent reduction in medical-related costs of civilian injuries in fires where automatic fire sprinklers were present, that perhaps injuries were also less severe.

The commenter also noted that automatic fire sprinklers are a requirement for one-and-two family occupancies in the 2006 edition of NFPA 5000 Building and Construction Code, as well as the 2009 International Residential Code (IRC). The commenter noted that modern homes burn hotter and faster, due to lightweight construction practices, open floor plans, and synthetic furnishings, which leave occupants with as little as two minutes to escape. Fire sprinklers can control the fire until firefighters arrive and give occupants more time to escape.

Based on this, the commenter recommended that HUD require automatic fire sprinklers in all manufactured homes to provide them with the equivalent level of safety as site-built homes. The commenter also recommended that HUD to take the opportunity to ensure manufactured homes provide a higher level of safety than site-built homes and noted that 42

U.S.C. 5401 *et seq.* contains no requirement of parity between the two kinds of housing.

To provide an adequate level of fire safety for multi-unit manufactured homes, the commenter referred HUD to section R302.2 of the 2021 edition IRC. The commenter advised that, to maintain the applicability of NFPA 13D, which is limited in scope to one-and-two family dwellings, the separation requirements of section R302.2 of the 2021 edition IRC must be applied between every two units in multi-unit manufactured homes. It explained that this would result in multi-unit manufactured homes being divided into two-family dwellings and it would then further be advisable to apply the requirements of R302.3 of the IRC for separation between individual units.

In the alternative to requiring automatic fire sprinklers in all new manufactured housing, the commenter supported the incorporation of NFPA 13D by reference for those homes in which sprinklers are installed. The commenter explained the history of NFPA 13D and stated that it believed NFPA provides the appropriate balance between safety and affordability. The commenter believed consumers should have the right to choose fire sprinklers and be confident that they were installed in accordance with the most up-to-date standards.

HUD Response: HUD acknowledges the comments but disagrees that the proposed fire sprinkler system standards would fail to protect residents from personal injuries and protect the public from unreasonable risk. While the final rule does not require the installation of fire sprinkler systems in all manufactured homes, the final rule does establish minimum requirements for the design and installation of a fire sprinkler system if a manufacturer produces a design that contains the optional feature. These minimum requirements are intended to create uniformity.

HUD agrees that fire sprinkler systems can be a very effective means for controlling risk of fire-related injuries and providing additional protection for occupants. HUD agrees that the NFPA also considers the balance between safety and affordability, and that consumers have the right to choose fire sprinklers for their protection of life and property, and to be confident in its installation and integrity. HUD also recognizes the need to balance considerations of cost and effectiveness when preserving affordability for manufactured housing consumers. HUD also acknowledges that manufactured homes built in compliance with HUD's

existing fire safety standards are significantly safer and more fire-resistant than the mobile homes built prior to the MHCSS. The final rule incorporates NFPA 13D by reference for § 3280.214(b), (e) and (o), including the exception for multi-dwelling unit manufactured home construction (24 CFR 3280.215(b)(3)), based on the 2021 edition IRC section R302.3 that allows for a fire resistance rating of ½ hour to be permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with § 3280.214.

Furthermore, HUD is required by the Manufactured Housing Improvement Act of 2000 to use a consensus process for thorough review and evaluation of proposed changes. Generally, proposed changes to HUD standards must be submitted and reviewed for recommendation to the Secretary before HUD can consider or implement changes to the MHCSS by notice and comment rulemaking. Absent an authority to act or emergency, HUD may not consider or impose a mandatory fire sprinkler standard at this time because the MHCC has not provided a recommendation to change the standards.

Clarifying the Language of § 3280.214

One commenter suggested a revision to the language of § 3280.214, which it believed would support State and local jurisdictions in its safety efforts. Specifically, in § 3280.214, the commenter recommended that paragraph (a)(1) read “. . . when a manufacturer installs a fire sprinkler system as an optional feature or to meet state or local laws and regulations, this section . . .” The commenter stated that this change was advisable to broadly preempt State or local requirements for manufactured homes.

HUD Response: HUD agrees with the commenter and has amended § 3280.214(a)(1).

Standards for Fire Sprinkler System Piping in § 3280.214(p)

Two commenters expressed concern about the proposed rule at § 3280.214(p) which subjects the fire sprinkler system piping to the same test as the water distribution systems in § 3280.612(a). The commenters explained that the proposed rule requires the test to be conducted with air or water at 100 PSI for 15 minutes, whereas the NFPA 13D, which is identified as a reference standard, requires a hydrostatic (water) test in order to pressurize the system at 200 PSI for two hours. One commenter recommended that all proposed regulations regarding the installation of

the fire sprinkler systems be withdrawn from the docket. The other commenter recommended that § 3280.214(p) be aligned with the reference standard to avoid confusion.

HUD Response: HUD acknowledges these comments. The water supply testing provisions proposed by HUD were determined to accommodate more types of piping materials, such as nonmetallic pipe and tubing, such as CPVC and PEX. Some materials used for home sprinkler systems are not suitable for the 100 PSI or higher testing requirements cited by NFPA for metallic pipes, and HUD must consider both safety and affordability considerations for the design and construction of manufactured homes. Sprinkler piping must comply with all requirements for cold-water distribution piping.

Reduced Fire-Resistance Rating for Buildings With Automatic Sprinkler Systems

Some commenters noted that the proposed language regarding fire separation requirements between two dwelling units was based on language from the IRC but was missing an important exception. The commenters stated that the rule was missing the 2021 IRC R302.3 exception 1 for homes that have fire sprinklers installed.

A commenter specifically recommended that HUD incorporate 2021 IRC R302.3 exception 1 as the third exception of § 3280.215(b). The language proposed by the commenter would read as follows: “A fire resistance rating of ½ hour shall be permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 3280.14”.

HUD Response: HUD agrees with the comment's suggested change and has added this exception to § 3280.215(b) in the final rule. The exception provides an allowance for multi-dwelling unit manufactured homes equipped with automatic fire sprinklers in each dwelling unit, the fire resistance rating of walls and floors may be reduced from 1 hour fire resistance rating to ½ hour fire resistance rating.

Roof Resistance to Fire

One commenter recommended that HUD adopt a minimum requirement for the fire resistance of roofing materials to provide a Class A fire rating as determined by either ASTM E108 or UL 790.

HUD Response: HUD acknowledges this comment and recommends that the commenter propose a standard to be reviewed by the MHCC. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Generally, absent authority to act or address an emergency, HUD addresses or incorporates changes after proposed changes are reviewed by the MHCC.

The Proposed Rule's Three-Unit Limitation on Multi-Dwelling Unit Manufactured Homes

While noting that they supported the regulation's express authorization of multi-dwelling unit manufactured homes, some commenters disagreed with the three-unit limitation proposed by HUD. These commenters provide several bases for their position.

Initially, one commenter stated that the limitation exceeded HUD's statutory authority under 42 U.S.C. 5402(6), since 42 U.S.C. 5402, which defines "manufactured home," does not contain a limitation to the number of single-family homes that can be joined into a multi-dwelling unit. The commenter also stated that HUD and MHCC appear to recognize that the restriction has no basis in statutory authority by pointing to the text of the proposed rule which states that "MHCC based its determination on ensuring consistency with a similar state code" and to contemporaneous MHCC documents which, the commenter claimed, show that MHCC based its determination on the subcommittee members' belief that the limitation would keep HUD standards consistent with the IRC, while a higher limit or no limit would require compliance with the International Building Code (IBC). The commenter stated that reliance on or reference to State building codes or non-manufactured housing model codes as the basis for the limitation lack any legitimate basis for the limit since (1) manufactured housing is not subject to or regulated by any State code or model code unless incorporated by the MHCSS by reference, which is true for neither IRC nor IBC and (2) neither the IBC nor the IRC is specific to manufactured housing or its associated statutory purposes, such as affordability.

The commenter also raised constitutional equal protection concerns related to narrow definitions of "family" or "single family," noting that manufacturers and retailers could be subject to discrimination claims and potential liability for refusing to sale or lease a home based on the status of the consumer or its expected use. Finally, the commenter stated that the unit restriction exceeded Federal authority because once a manufactured home is sold and installed, its use becomes a matter for State and local authority through mechanisms like zoning and use permits.

A second commenter similarly expressed concern that the "size requirements" were necessary because localities already set standards in this area and that HUD's standards would only serve to limit availability of products to consumers. This commenter also recommended that HUD support "multi-level, multi-unit dwellings," in light of land-use limitations faced in many communities. The commenter explained that this support would enable increased housing availability, affordability, and healthy community growth. A third commenter recommended that HUD raise or eliminate the 3-unit multifamily cap noting that any unit cap must have a valid policy basis and suggested that the current proposed rule lacked such a basis as to the three-unit restriction.

HUD Response: HUD appreciates the comments but disagrees that HUD lacks the authority to limit the number of units that can be joined to form a multi-dwelling unit manufactured home. Under section 604(b) of the Manufactured Housing Improvement Act of 2000, HUD has broad authority to establish, after recommendation from the MHCC, construction and safety standards and model installation standards for manufactured homes. Limiting the number of single-family units that may be installed together and still be considered a manufactured home for Federal purposes is an exercise of those various authorities. Consistent with the requirements of the Act, HUD, in consultation with the MHCC, determined that the limit on the number of units is reasonable and practical and can reduce potential safety or unforeseen logistical challenges. 42 U.S.C. 5403(a)(1)(A)(i). HUD's statutory obligation is to protect residents of manufactured homes from personal injuries, insurance costs, and property damages. HUD agrees that zoning regulations and the land use planning of local jurisdictions could also impact the installation of multi-dwelling unit manufactured home but does not agree that HUD's standards will have an adverse impact on product availability.

In response to these comments along with other considerations detailed below, HUD has increased the limit to four (4) units for the definition of multi-dwelling unit manufactured homes. HUD considered the criteria established by the Federal Housing Administration, which insures multi-dwelling unit manufactured homes of one to a maximum of four units under HUD's single family program. Further, the maximum number of four is commensurate with maximum limits established for attached units in

international code requirements. These considerations, as well as ensuring uniformity between HUD programs, led HUD to conclude that four units was appropriate, at this time, for the definition of multi-dwelling unit manufactured homes.

HUD acknowledges certain commenters suggested eliminating the limit on units entirely. However, such a proposal was neither recommended by the MHCC nor presented in the proposed rule for public review and comment. The absence of these actions prevents HUD from considering the recommendation until the MHCC completes a consensus driven review and provides a recommendation to the Secretary. HUD requests that the commenters propose this code change to the MHCC and provide supporting rationale and justifications with the proposal. The public may submit proposed revisions to the MHCSS via the internet at mhcc.homeinnovation.com.

HUD would like to clearly state the distinct terminology and nomenclature that multi-dwelling unit manufactured homes are single family structures and are not properly or technically classified as "multifamily" dwellings which are traditionally five or more dwelling units and are considered commercial property.

Use of the ASCE 7-05 To Recalculate Wind Speed References

Numerous comments stated that ASCE 7-05 was not an appropriate standard for use in the proposed wind design standard and recommended that HUD use ASCE 7-10. Many of these commenters stated that the proposed wind speeds used by ASCE 7-05 result in more onerous requirements for a wind zone (WZ) II house than would exist for a WZ III house designed under current standards. As examples, commenters noted that a WZ II house on the Gulf Coast of Alabama would, under the proposed standard, have the same design wind speed as a house located in the Florida Keys using the newer editions of ASCE. Another commenter gave the example that a WZ II house in Magnolia Springs, Alabama would need to be constructed in the same way as one in Marathon, Florida. Further, commenters noted the proposed rule uses wind speeds that exceed the highest mapped wind speeds under the more current editions of ASCE. Similarly, one commenter noted that for WZ II, no location in the contiguous United States utilizing ASCE 7-10 or other newer version has a wind speed equaling 194 miles per hour. The commenter also noted that use of

ASCE-7-05 would require design to Vult=181mph for WZ II and Vult=194mph for WZ III.

A number of commenters expressed concern about the increased costs that would be imposed on the industry as a result of the new wind standards. Several commenters noted that the proposed rule would increase costs in other areas including ESR-1539 “increased/stronger metal strapping, calculated staples,” NDS 2015 “longer lags to account for tip, more SYP lumber due to reduced design properties,” and AISC 360-10 “increased/stronger uplift straps.” These commenters contrasted these costs, which they referred to as “acceptable and understandable,” to the use of the ASCE 7-05 standard which they suggested were both unacceptable and incomprehensible.

Several commenters stated that ASCE 7-05 is a flawed measure because it excludes hurricane prone regions from the Exposure D definition, a decision that some commenters note has been found to be inappropriate. Commenters noted that if ASCE 7-05 is adopted, other portions of the 24 CFR part 3280 will need to be revised in light of the change in the Exposure D definition.

One commenter noted that the language in the proposed rule stating that “conversions could not be used alone as they do not factor in changes ASCE 7 made throughout the years to determine the wind pressures for building design that are now based on wind speed” as lacking reason. The commenter stated the ASCE 7-10 introduced a factor of 0.6 in the load combination for wind, thereby reducing the wind pressure from ASCE 7-05, and criticized HUD’s decision to apply its own factor without clear basis to arrive at the figures for WZ II and WZ III.

Another commenter questioned HUD’s comparison of ASCE 7-88 and ASCE 7-05 and noted that if velocities of 120 miles per hour (mph) and 130 mph are used, the result is an 18 percent increase in ASCE 7-05 over ASCE 7-88. It contrasted this to velocities of 140 mph and 150 mph, which would lead to a 61 percent increase. The commenter recommended HUD revise the proposed 140 and 150 wind speeds to 120 and 130 miles per hour as it had done initially.

Another commenter also expressed concern surrounding HUD’s wind pressure standards. The commenter noted that when comparing the pressures in ASCE 7-88 to the table pressures, many of the ASCE 7-88 table pressures are lower but some are higher. The commenter encouraged new regulations to continue “this principle” given that the “intent of engineered

design is to be comparable but designed in a more precise manner.” While not entirely clear, this commenter appeared to recommend that lower wind pressures be used in the NPR.

Some commenters stated that the revised standard would make construction of roof pitches over 20 degrees more expensive, or would even be impossible, and would make manufactured homes uncompetitive. One commenter explained that the standard was flawed because it applied the loads without regard to exposure and that use of the ASCE 7-10 standard would enable roof pitches over 20 degrees to be built.

Other commenters considered ASCE 7-05 flawed because it relied on wind speed criteria that are obsolete such as ASCE 7-05’s use of “stress-level” wind speeds as opposed to “strength-level” wind speeds. The commenters stated that this standard could cause confusion among consumers regarding the wind safety of manufactured homes and may dissuade them from purchasing such homes. These commenters instead recommended use of a newer version of ASCE 7 and revisions to the methodology underlying the adopted wind speeds. Some commenters specifically recommended use of the ASCE 7-10. One commenter recommended use of ASCE 7-22 and advised that the methodology for the adopted wind speeds, as well as the WZ II and WZ III wind speeds, be revised accordingly.

HUD Response: HUD appreciates the comments received. HUD is not updating the reference standard for wind load design from ASCE 7-88 to ASCE 7-05 after considering the public comments. Instead, HUD is returning this item to the MHCC for reconsideration. It is HUD’s conclusion that updating the ASCE reference standard is not appropriate without updating several sections in the MHCSS, including the values in the Table of Design Wind Pressures in § 3280.305(c)(ii)(B), the Wind Speed Map and geographic boundaries identified in § 3280.305(c)(2) and (4), and references to Exposure D in § 3280.5(g). HUD recommends that the MHCC reconsider updating both the table and the impacted reference to ensure correlation for same edition of ASCE 7.

In making this recommendation, it is vitally important to provide the background and origin of HUD’s current standard regarding wind provisions. In the months following Hurricane Andrew, HUD proposed the rule to replace the wind load provisions of the MHCSS. That proposed rule, which was

based on a refined version of ASCE 7-88, formed the basis of the current HUD standard. In the proposed rule, the design wind pressures were based on the formation of three wind zones: Zone I with wind speeds of 80mph or less, Zone II with wind speed from 81 to 100 mph, and Zone III with wind speed of 101 to 110 mph. These three wind zones are separated by zone boundaries corresponding approximately to the 80 mph and 100 mph isotaches along the Atlantic and Gulf Coasts. The States of Hawaii and coastal portions of Alaska are designated as Zone III.

Because ASCE 7-88 was used as the basis to develop HUD’s current standards regarding wind provisions in § 3280.305, referencing ASCE 7-88 for determining design wind loads in §§ 3280.5(f), 3280.304(b), and 3280.305(c) result in approximately identical or close results as those shown in HUD’s Table of Design Wind Pressures for manufactured homes in almost all U.S. locations. This consistency supports the option of using either ASCE 7-88 or HUD’s Table of Design Wind Pressures specified in § 3280.305 for wind loads in high wind areas (Zones II and Zone III). This consistency, however, does not exist for ASCE 7-05 or ASCE 7-10.

Although in general the equation for obtaining design wind pressure in ASCE 7-88 and all later editions can be expressed as the square of basic wind speed, multiplied by a couple of coefficients that represent different factors contributing to design wind pressure yet independent from basic wind speed, the design philosophy and methodology underlying those factors and how they interact with one another and the basic wind speed and the wind maps, have evolved dramatically since ASCE 7-88. First, the definition of basic wind speed has changed from being based on “fastest mile” wind speed measurements in ASCE 7-88 to being based on the “3-second gust” wind speed measurements in ASCE 7-05 and later editions. Second, the exposure velocity pressure coefficient, which reflects change in wind speed with height and terrain roughness, the topographic factor, which accounts for wind speed-up over hills and escarpments, and the directionality factor were added in ASCE 7-05.

Most importantly, the wind maps have changed dramatically since the original 1993 rulemaking and have been completely redrawn in more recent editions of ASCE 7. More recent maps in ASCE 7-05 show high-wind zones extending much farther inland than those shown on the 1988 map and contour lines also have changed, which

would significantly affect basic wind speeds used for calculations. The basic wind speed determined by using ASCE 7–05 can produce a very different result than the calculation based upon HUD’s standard for the same location. In addition, in response to the public comments recommending ASCE 7–10 instead of ASCE 7–05, HUD notes that ASCE 7–10 included another major revision to ASCE 7–05 that needs to be considered by the MHCC. ASCE 7–10 no longer includes an importance factor and introduces risk categories. Instead of having one map as in ASCE 7–05, ASCE 7–10 introduces three new wind speed maps that correspond to each risk category. The ASCE 7–10 maps were transitioned to reflect the use of the different risk categories and alternate load and resistance design methodologies (allowable stress design instead vs. load and resistance factor design). Furthermore, ASCE 7–10 reintroduced Exposure D for water surfaces in hurricane-prone regions, including a new wind-borne debris region, along with a new simplified procedures for buildings up to 160 feet in height, and new minimum wind loads for walls. These changes are very important and must be thoroughly considered by the MHCC before updating the HUD standards.

HUD recognizes that updating the basic wind speeds and certain isotach references for Wind Zone III in the State of Alaska and Guam, as originally proposed, will certainly lead to a mismatch of design wind pressures for many locations. These mismatches have been reported in several public comments. For HUD to update the reference standard to ASCE 7–05, or ASCE 7–10, or any other edition of ASCE 7 that has undergone major change(s) of wind map contour lines, revisions that are far too substantial to be incorporated between proposed to final rulemaking would need to be implemented. In addition, these changes, which include, but are not limited to, updating the zone maps in § 3280.305 must be reviewed through the consensus committee process for development and revision of HUD standards.

HUD agrees with the comment that the intent of engineered design is to be comparable but designed in a more precise manner. From an engineering design perspective, every revision of the ASCE 7 wind load provisions over time has been made to improve building design and address safety considerations. For instance, design wind loads have increased for locations where the probability of hurricanes have risen, yet decreased in circumstances

where scientific and engineering advancements, such as new technologies simulating and testing wind speeds, updated design methodologies, or breakthrough research findings, have improved the design of homes. HUD’s purpose for updating design standards is to revise standards to be more accurate and consider public safety. As such, updating the reference standard for design wind pressures for Exposure C from ASCE 7–88 to a more recent version without revising the Table of Design Wind Pressures would be in conflict with the general purpose of updating HUD’s standards.

Based on this assessment, HUD has determined that the proposed methodology, if applied to the wind zone map codified under § 3280.305, will result in significant cost impacts that have not yet been fully considered nor recommended by the MHCC. HUD is returning this recommendation to the consensus committee for further review and analysis and has removed the proposed changes from the final rule. ASCE 7–88 remains the codified reference standard and basis for design wind pressures and wind zones established for high wind areas.

Statutory Authority for the Increase in Wind Resistance Standards

One commenter opposed the proposed rule’s use of the ASCE 7–05 standard and “three-second gust” parameter to recalculate the wind speed references for manufactured homes in Wind Zones II and III on the grounds that HUD had exceeded their statutory authority in making the change. Specifically, the commenter stated that HUD had impermissibly relied on consistency with the design of other single-family structures in modifying its parameters. The commenter referenced the proposed rule’s statement that the three-second gust parameter “would keep manufactured housing on par with design of other single-family structures.” The commenter stated that HUD does not have authority that would allow HUD to base new or amended MHCSS standards on identity with or similarity to standards for other types of housing. The commenter also stated that HUD and MHCC had neglected their statutory duty by failing to, in recommending and proposing MHCSS standards, consider the cost of such standards. It cited to 42 U.S.C. 5403(e) for the proposition that MHCC and HUD must consider “the probable effect of such standard on the cost of the manufactured home to the public.”

Finally, the commenter suggested that, if an increase in design wind speed

would result from updating to the ASCE 7–05 standard, then HUD should specify which aspect of manufactured housing safety is unsatisfactory under the current standards and provide evidence to support that determination and show the cost impact of such changes on home purchase price.

HUD Response: HUD has a statutory obligation to establish construction and safety standards under section 604(a)(1)(A) of the Manufactured Housing Improvement Act of 2000. However, the current ASCE 7 standard will not be changed in the final rule and the recommendation is being returned to the MHCC for reconsideration. This is based upon HUD’s engineering assessment and public comments identifying issues with the proposed standard.

Resistance to Seismic Lateral Loads

One commenter noted that although the proposed rule went into detail of the provisions for wind load, it had left other lateral loads such as seismic loads largely unaddressed. The commenter recommended that provisions for seismic loads be incorporated into the document. It specifically suggested that such provisions be incorporated where the incorporation of seismic loads may control or otherwise modify the designs of the structure or component. As an example, the commenter pointed to § 3280.305 Windstorm and recommended that provisions for support and anchoring systems to resist other lateral loads be incorporated. The commenter provided further examples of § 3285.103 site suitability with design zone maps and recommended that it be updated to address seismic zone suitability check along with incorporation of seismic loading into part 3280. The commenter also recommended that the rule address anchorage for seismic loads.

HUD Response: HUD acknowledges this comment and recommends that the commenter submit a proposed code change supported by technical analysis and corresponding design zone maps, to be reviewed by the MHCC. The MHCC is a Federal advisory committee established and required by statute. All proposed changes to the MHCSS must follow the MHCC consensus process to comply with Federal regulations. Generally, proposed changes to HUD standards must be submitted and reviewed for recommendation to the Secretary before HUD can consider or implement changes to the MHCSS by notice and comment rulemaking. The public may submit proposed standards at mhcc.homeinnovation.com.

Snow Load Standards

One commenter noted that the basis of design snow loads has changed from average ground snow to maximum event snow in the 2022 IBC. The commenter also expressed concern about obsolete load standards in HUD regulations generally and recommended that HUD regulations be revised to be based on the latest versions of the load standards.

HUD Response: HUD acknowledges this comment and recommends that the commenter propose a code change to be reviewed by the MHCC. As mentioned in the previous response, generally, proposed changes to the MHCSS must be submitted and reviewed by the MHCC through the statutory consensus process for recommendation to the Secretary before HUD can consider changes for rulemaking. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

HUD Reference No. 8, Water Resistive Barrier

One commenter stated that the HUD Reference No. 8, Water Resistive Barrier, would increase the acquisition cost of manufactured homes without remedying the identified safety or construction deficiencies. The commenter recommended that the requirement be eliminated from the final rule. The commenter cited HUD's statement that a requirement would "align [the] manufactured housing code with site-built construction standards," and stated that HUD did not have the authority to mandate changes for this reason. Rather, the commenter saw HUD as having authority to propose and adopt standards only for the purposes of addressing specific, identified life, health, and safety and construction matters with the goal of protecting against unreasonable risk of accidents or any unreasonable risk of death or injury if such accidents occur.

HUD Response: HUD acknowledges these comments. HUD has a statutory obligation under section 604(a) of the Manufactured Housing Improvement Act of 2000 to establish and enforce construction and safety standards for manufactured homes. This includes authority to revise the MHCSS for consistency and improve efforts to protect the quality, durability, safety, and affordability of manufactured homes. Water resistive barriers play a critical role in protecting homes from moisture damage, improving energy efficiency, enhancing durability, and reducing the impacts of climate change by adding an additional layer of protection against water intrusion and rain and reducing air leakage.

Furthermore, insurance companies recognize the importance of water resistive barriers in mitigating water damage risks, which can result in potential insurance discounts or lower premiums that lead to cost savings for homeowners.

Recommended Revisions to Data Plate Disclosure Language of 24 CFR 3280.5(g)

Several commenters recommended that HUD update the data plate disclosure definition to accord with the definition of Exposure D as described in ASCE/SEI 7–05. They noted that ASCE/SEI 7–88 defines "Exposure D" differently than ASCE/SEI 7–05. Two of these commenters recommended that § 3280.5(g) be revised to provide: "This home has not been designed for the higher wind pressures and anchoring provisions required for locations with 600' of flat, unobstructed areas and water surfaces in Wind Zone I which extend out 5,000 feet or more unless the home and its anchoring foundation system have been designed for the increased requirements specified for Exposure D in ANSI/ASCE 7–05."

HUD Response: HUD appreciates the comments. HUD conducted an engineering assessment in response to public comments on the ASCE–7–05 wind standard. The assessment raised additional cost and efficacy concerns that must be examined by the MHCC. The return of the standard to the MHCC was necessary because, unlike the recommendations about the AAMA standard, where the MHCC provided HUD with recommendations for both the 2011 and 2017 standards, the MHCC's recommendation did not provide HUD an alternative reference standard. This absence deprives HUD of authority to enact a new standard, which must first be reviewed by the MHCC's further engineering assessment. The final rule will not update the ASCE standard to a version other than what is currently codified. If HUD revisits the matter in future rulemaking, commenters are encouraged to submit this feedback again.

HUD Reference No. 25, National Design Specification for Wood Construction

One comment stated that the HUD Reference No. 25, National Design Specification for Wood Construction, would increase the acquisition cost of manufactured homes without remedying identified safety or construction deficiencies. The commenter recommended that the requirement be eliminated from the final rule. The commenter cited HUD's statement that the requirement would

"increase home resiliency for consumers," and questioned whether HUD had the authority to mandate changes for this purpose under the 1974 Act. The commenter said that HUD especially lacked the authority for this change given that the standard would increase the purchase costs of homes and exclude potential purchasers without delivering specific identified and quantified benefits.

HUD Response: HUD acknowledges these comments. HUD has a statutory obligation to establish construction and safety standards under section 604(a)(1)(A) of the Manufactured Housing Improvement Act of 2000. This Act authorizes HUD to revise the MHCSS to protect the quality, durability, safety, and affordability of manufactured homes. The NDS is widely used by engineers, architects, builders, and other professionals involved in the design and construction of wood-framed buildings and structures. HUD is incorporating this reference standard to reflect the advancements in wood technology, industry best practices, and guidelines for wood construction that impact manufactured housing.

Purchase Price Impact Analyses

One commenter commented on the lack of purchase price impact analysis in the proposed rule. The commenter stated that, under section 604(3) of the 1974 Act, each reference standard change, addition, or modification must be accompanied by an analysis calculating the purchase price impact and weighing it against the alleged benefits of the proposed change. The commenter noted that HUD had provided no such analysis in table 2 or the preamble of the proposed rule.

The commenter stated HUD was obligated to consider the cost impact of any proposed changes or additions to the MHCSS standards within the context of the DOE "energy conservation" standards. The commenter stated that unnecessary HUD standards would compound with DOE standards to increase the cost of manufactured housing to the exclusion of lower and moderate-income potential purchasers. The commenter expressed concern that this decrease in affordability would be contrary to the 1974 Act and the priority of providing affordable housing. The commenter recommended that any standard in the proposed rule that lacked absent sufficient need and cost-benefit justification should be eliminated.

HUD Response: HUD acknowledges these comments. HUD considered the cost impacts from changes that stem

from this proposed rule in the regulatory impact analysis, which was published with the proposed rule. Specifically, the analysis states, “based on the overall weighted average per-unit cost increase, the average sales price of \$111,900 (Census of Manufactured Housing, August 2021), and the annual average production of 105,400, the decrease in homes purchased annually ranges from 77 to 130.” HUD sufficiently considered the purchase price impact and weighed it against the alleged benefits of the proposed change, as required by statute, when it drafted the proposed rule.

With respect to the rule issued by the United States Department of Energy, the standards are not under the purview of HUD and are not related to this rule. The information available to HUD, either through the adopted energy standards rule or provided by the commenter, does not suggest the energy rule will interact with the requirements of this rule. As such, including a cost impact analysis pertaining to DOE’s rulemaking would exceed the scope of this rule.

Lifecycle Cost Analyses

One commenter recommended that lifecycle cost analyses justifying any quality rules should include in their sensitivity analysis, a scenario with a discount rate equal to an index average MHCSS home chattel loan rate. The commenter noted that chattel loan rates can exceed OMB’s standard 3 percent and 7 percent real discount rates for cost-benefit analysis. The commenter explained that actual financing costs must be considered in the lifecycle cost analysis to guarantee real, all-in consumer savings are achieved.

HUD Response: HUD acknowledges these comments. Although the discount rate can be chosen based on the mortgage rate, the appropriate value would need to be the real interest rate, *i.e.*, the nominal rate minus inflation. OMB’s preferred 3% and 7% real discount rates provide a range that includes the commenter’s cited median nominal chattel loan rate of 7.8% minus inflation. Further, as discussed in the Consumer Financial Protection Bureau’s May 2021 report, “Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data”, only 42 percent of manufactured housing loans in 2021 were chattel loans. Thus, using a discount rate based solely on chattel loan interest rates would be inappropriate.

Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Based Material (3280.4(l)(23))

Two commenters recommended that HUD incorporate the 2016 version of ASTM D4442 by reference because of the unspecified minor, non-technical changes and three unspecified semi-technical changes that were made from the 2007 to the 2016 version of the ASTM D4442. The commenter stated that the changes in the 2016 version will not have an impact on the manufactured housing industry but did not provide basis for this statement.

HUD Response: HUD acknowledges these comments. Incorporation of 2016 version of ASTM D4442 was neither recommended by the MHCC nor presented in the proposed rule for public review and comment. The absence of these actions prevents HUD from considering the recommendation until the MHCC completes a consensus driven review and provides a recommendation to the Secretary. HUD requests that the commenters propose this code change to the MHCC and provide a copy of the version proposed for incorporation with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, 2013 (3280.4(l)(24))

Several commenters recommended that HUD incorporate the ASTM D73438–08 or ASTM D7438–13 Standard Practice for Field Calibration and Application of Hand-Held Moisture Meters into HUD regulations in place of the ASTM D4444. The commenters stated that the change would enable greater accuracy in calibration and would better align with current industry practices.

HUD Response: HUD acknowledges these comments and requests that the commenters propose a MHCSS change that would incorporate an alternate standard so that it can be reviewed by the MHCC as part of the consensus process. As discussed earlier, the Manufactured Housing Improvement Act of 2000 requires that the MHCC consider changes to the MHCSS, issue recommendations to the Secretary, and that the Secretary implement, modify, or reject the standards. Under sections 604(b)(3) and (4) of the Manufactured Housing Improvement Act of 2000, the Secretary must make the proposed regulations or interpretative bulletins available for public comment upon receipt of a recommendation and prior

to enactment. In light of these requirements, HUD requests that copies of the exact version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

AAMA/WDMA/CSA 101/I.S.2/A440–17

Several commenters questioned the decision to adopt the 2017 version of AAMA/WDMA/CSA 101/I.S.2/A440 at § 3280.4(d)(6). The commenters noted that AAMA/WDMA/CSA 101/I.S.2/A440–08 and –11 are the most common standard certifications used today and there are no material differences between the 2011 and 2017 versions. They believed that AAMA/WDMA/CSA 101/I.S.2/A440–17 would make certification more difficult and would increase costs. They recommended that AAMA/WDMA/CSA 101/I.S.2/A440–11 be adopted at 3280.4(d)(6) instead of AAMA/WDMA/CSA 101/I.S.2/A440–17.

HUD Response: HUD appreciates the comments and has revisited the original recommendations made by the MHCC to HUD. In March 2016 (Log 140), the MHCC recommended that HUD adopt the 2011 version of AAMA/WDMA/CSA 101/I.S.2/A440 at § 3280.4(s)(6). However, in December 2017 (Log 201), the MHCC recommended HUD adopt the 2017 version, citing that the current reference standard was significantly outdated and should be referencing the latest edition. As mentioned by the public comments, there are no major differences between the 2011 and 2017 versions. Updated standards typically address necessary edits or weaknesses found in previous versions, leading to improved building performance and compliance in areas of quality, safety, and durability. Adopting the more recent standard into the MHCSS will not make certification more difficult or significantly increase costs. Most windows produced for construction purposes today are likely to already be built to meet current industry standards because of enforcement of window certifications by jurisdictions across the United States. HUD has incorporated the 2017 version in this final rule, which is not the most recent version as of 2024, to ensure that manufactured homes are constructed using more modern, relevant, and effective technologies and materials.

Reference to APA PSI–2009

One commenter recommended that HUD replace references to APA PSI–2009 with the most current version, which is NIST Voluntary Product Standard PS 1–19. The commenter

further recommended that, in place of listing a year or version, that the rule contain references to “the current version”.

HUD Response: HUD cannot enact these suggested changes unless the MHCC first considers the commenter’s suggestion in a consensus process and provides the Secretary with a recommendation. The Administrative Procedure Act also requires HUD to place the public on notice regarding standards upon which it may take future enforcement action and provide an opportunity for public review and comment. Considering these statutory limitations, HUD acknowledges these comments and requests that the commenters propose a code change to incorporate more recent versions to be reviewed by the MHCC. HUD requests that copies of the exact version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com. Please note that HUD is unable to broadly incorporate standards into Federal regulation without specificity.

Updates to Reference Standards Regarding Gas-Fired Appliances and Accessories

One commenter recommended that HUD update the reference standards for appliances and components used in the construction of manufactured homes to the most current editions. The commenter stated that mandating that appliances and components comply with outdated standards would burden manufacturers by mandating and would limit homeowners’ ability to have the most current products. The commenter recommended that HUD review the standards and update references to the most recent editions. Specifically, the commenter suggested incorporating following standards and codes for gas-fired appliances and accessories, including controls and tubing:

- CSA/ANSI LC 1–2019 • CSA 6.26–2019 as the standard for Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing in 3280.705(b) in order to update ANSI/IAS LC 1–1997.
- CSA/ANSI Z21.1–2019 • CSA 1.1–2019 as the standard for Household Cooking Gas Appliances in order to update ANSI Z21.1–2000.
- ANSI Z21.5.1–2017 • CSA 7.12–2017 as the standard for the Gas Clothes Dryers Volume 1, Type 1 Clothes Dryers in order to update ANSI Z21.51.1–1999, Gas Clothes Dryers Volume 1, Type 1 Clothes Dryers, with Addendum z21.5.1a–1999.
- CSA/ANSI Z21.10.1–2019 • CSA 4.1–2019, Gas Water Heaters Volume 1, Storage Water Heaters with Input Ratings of 75,000 BTU per Hour or Less in order to update

- ANSI Z21.10.1–1998, Gas Water Heaters—Volume 1, Storage Water Heaters with Input Ratings of 75,000 BTU per hour or Less, with Addendum Z21.10.1a–2000.
- CSA/ANSI Z21.10.3–2019 • CSA 4.3–2019 Gas-fired Water Heaters Volume 3, Storage Water Heaters with Input Ratings Above 75,000 BTU per Hour, Circulating and Instantaneous.
- ANSI Z21.15–2009(R2019) • CSA 9.1–2009(R2019), Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves in order to update ANSI Z21.15–1997.
- CSA/ANSI Z21.19–2019 • CSA 1.4–2019, Refrigerators Using Gas Fuel. The proposed rule would update ANSI Z21.19–1990, with Addendum ANSI Z21 19a–1992 and ANSI Z21 19b–1995.
- ANSI Z21.20–2014, Automatic Gas Ignitions Systems and Components in order to update ANSI Z21.20 with Addendum Z21.20a–2000.
- CSA/ANSI Z21.21–2019 • CSA 6.5–2019, Automatic Valves for Gas Appliances in order to update ANZI Z21.21–2000.
- CSA/ANSI Z21.23–2022 • CSA 6.6–2022 in order to update ANSI Z21.23–1993.
- CSA/ANSI Z21.24–2022 • CSA 6.10–2022, Connectors for Gas Appliances in order to update ANSI Z21.24–1997/CGA 6.10–M97, Connectors for Gas Appliances, and remove the reference to the Compressed Gas Association.
- ANSI Z21.40.1–1996(R2022) • CSA 2.91–1996(R2022), Gas Fired, Heat Activated Air Conditioning and Heat Pump Appliances in order to correct the title of this standard from ANSI Z21.40.1–1996/CGA 2.91–M96, Gas-Fired, Heat Activated Air Conditioning and Heat Pump Appliances, to remove the reference to the Compressed Gas Association.
- CSA/ANSI Z21.47–2021 • CSA 2.3–2021–2012, Gas Fired Central Furnaces in order to update ANSI Z21.47–1990 with Addendum Z21.4a–1990 and Z21.47b–1992, Gas-Fired Central Furnaces (Except Direct Vent System Central Furnaces).
- ANSI Z21.75–2016 • CSA 6.27–2016, Connectors for Outdoor Gas Appliances and Manufactured Homes.
- NFPA 54/ANSI Z223.1–2021, National Fuel Gas Code in order to update NFPA 54–2002, National Fuel Gas Code.
- NFPA 58–2020, Standard for the Storage and Handling of Liquefied Petroleum Gases in order to update NFPA 58, Liquefied Petroleum Gas Code, 2001 Edition.

The commenter recommended that CSA Group, which it referred to as the accredited standards development organization for many of the standards, be included in the resources. The commenter also recommended that HUD include the following address where copies of the standards could be obtained: CSA Group/8501 East Pleasant Valley Road/Independence, OH 44131/csagroup.org.

HUD Response: HUD acknowledges these comments and requests that the commenters propose a code change to incorporate more recent versions to be

reviewed by the MHCC, for the same reasons described previously addressing need for consensus review and public notification. HUD requests that copies of the exact version proposed for incorporation be included with the proposal. The public may submit proposed standards at mhcc.homeinnovation.com. HUD understands that many standards are accredited jointly by more than one rating agency, such as CSA Group, but this is commonly understood and the contact information for additional resources is readily available and accessible online. For purposes of organization of 3280.4 in the final rule, jointly issued ANSI/CSA standards are categorized under ANSI.

Updated Reference Standards Related to Plumbing

Several commenters requested revisions to the plumbing standards. One commenter advised HUD to consider updates to certain standards incorporated by reference in §§ 3280.4 and 3280.604. The commenter premised its recommendations on the importance of having plumbing product standards reflect technological advancements, product innovations, drinking water exposure to indirect additives in products and materials, and updates to testing methodologies. The comment included line edits to §§ 3280.4(j), 3280.4(dd), 3280.604(b), and 3280.604(c) that it advised HUD to revise the rule to better align it with current building codes, product standards, and building practices.

Another commenter requested removal of polybutylene pipe and fittings standards, which it stated had already been removed from model plumbing codes. The commenter noted that, to its knowledge, polybutylene pipe and fittings are not certified to ASTM standards and are not generally available for hot and cold-water distributions in the United States. The commenter proposed pages of line edits incorporating these recommendations into §§ 3280.604(b)(2) and 3280.4(dd).

The commenter also recommended changes to reflect current titles and editions of NSF, ASTM, and CISPI standards and current legal name of NSF International. It requested removal of the NSF/ANSI 24 Plumbing System Components for Recreation Vehicles given that it had been revised to remove manufactured homes and was thus no longer applicable.

Another commenter recommended line edits to §§ 3280.4(g), 3280.4(k), 3280.4(v), 3280.604(c), and 3280.604. Specifically, the commenter recommended that HUD remove from

the rule the following standards: ASSE/ANSI-1986, ASSE 1007-1986, ASSE 1025, IAPMO PS 2-89, IAPMO PS 4-90, IAPMO PS 5-84, IAPMO PS 9-84, IAPMO PS 14-89, and IAPMO PS 31-91. The commenter also recommended that HUD use the following updated standards: IAPMO Z124.5-2013e1 (R2018) instead of ANSI Z124.5-1997; and IAPMO Z124.7-2013 (R2018) instead of ANSI Z124.7-1997. The commenter also recommended that HUD use ASSE 1001-2021; ASME A112.1002-2020/ASSE 1002-2020/CSA B125.12-2020; ASSE 1008-2020; ASSE 1011-2017; ASSE 1014-2020; ASME A112.1016-2017/ASSE 1016-2017/CSA B125.16-17; ASSE 1017-2009 (R2014); ANSI/ASSE 1019-2011 (R2016); ASSE 1023-2020; ASSE 1051-2021; IAPMO PS 23-21; IAPMO TS 03 (R2022); and IAPMO TS 22-97e1 (R2020). In addition to the safety considerations and desire for most up-to-date testing methodologies and products noted by many of the commenters, this commenter explained that use of the most current versions of the standards would allow for incorporation of the results of efforts by the International Association of Plumbing and Mechanical Officials to harmonize product standards used for plumbing products in the US and Canada.

Another commenter specifically referenced parts 3280, 3282, 3285, and 3286, noting that they contained references to outdated standards. The commenter also noted that there were a number of missing newer standards from ASSE, ASTM and others for modern products, pipes, and fittings, specifically for new PEX fittings and modern piping materials like PERT and Polypropylene. The commenter attached a list of current standards with active versions years to which it directed HUD's attention.

HUD Response: HUD appreciates these comments and requests that the commenters submit these code changes to be reviewed by the MHCC, for the same reasons described previously. For reference standard version changes, HUD requests that copies of the exact version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Updated NFPA Reference Standards

A commenter proposed the following additional updated reference standards related to NFPA. It noted the importance of updated standards to ensure that the requirements accommodate advancements in technology and practices and the most-up-to-date safety knowledge.

Accordingly, it recommended that HUD incorporate by reference the most recent version of various NFPA standards. Specifically, the commenter recommended incorporation by reference of the following NFPA standards:

- The 2022 edition of NFPA 13D in § 3280.214(b). Specifically, the commenter recommended use of table 7.5.6.3 instead of 7.5.5.3 in (e)(2), the use of tables 10.4.9.2(b) through (h) and table 10.4.9.2(c) in (o)(3)(i) and table 10.4.9.2(b) in (o)(3)(ii). The commenter believed that these changes would allow HUD to incorporate the most up-to-date standards related to freeze protection, sprinkler positioning, sprinklers in vacant structures, and use of well pumps as a water supply.
- The 2020 edition of NFPA 31 in §§ 3280.703(d) and 3280.707(f). It noted that changes from the 2011 to the 2020 version include listing criteria and fuel types for fuel burning appliances, acceptable piping and fitting materials, and updates to reference standards.
- The 2021 edition of the NFPA 54 in § 3280.703(d). It noted that changes between the two versions include pipe grounding and bonding, pipe fittings, venting requirements for chimneys, and appliance listing criteria.
- The 2023 edition of the NFPA 70 National Electrical Code which includes updates related to exterior emergency power disconnects for fire responders, network-connected life safety equipment, wireless power transfers of electric vehicles, and Class 4 fault-managed power. Relatedly, it noted that § 3280.807(c) refers users to Article 410.4 but should refer to Article 410.10(D).
- The 2020 edition of NFPA 58 in § 3280.703(d). It noted that the more recent version includes changes related to snow load maps, fire extinguisher requirements, fire resistance ratings, noncombustible materials, and other changes.
- The 2021 edition of NFPA 90B in § 3280.703(d) in order to incorporate updated reference standards and editorial changes.
- The 2021 edition of the NFPA 253 Standard on Types of Building Construction in § 3280.202 to stay consistent with the most current terminology for the definition of "limited combustible" and "noncombustible".
- The 2023 edition of NFPA 253 in § 3280.207(c). The commenter recommended the change to create uniformity with other fire test standards and provide more up-to-date referenced standards.

- The most current versions of ASTM E84 and UL 273. The commenter noted that the proposed rule references the 1995 version of the NFPA 255 on Standard Method of Test of Surface Burning Characteristics of Building Materials in §§ 3280.203(a) and 3280.207(a). It explained that the standard was withdrawn in 2009 and recommended removing the reference and using the most current versions of ASTM E84 and UL 273 instead.

- The 2022 edition of NFPA 72 in lieu of NFPA 720 in § 3280.211(b). The commenter noted that NFPA 720 was withdrawn in 2018 and its requirements were incorporated into the 2019 edition of NFPA 72.

HUD Response: HUD appreciates these comments and requests that the commenters submit these code changes to be reviewed by the MHCC, for the same reasons described previously. For reference standard version changes, HUD requests that copies of the exact version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Use of Most Up-to-Date ASCE Reference Standards

One commenter made specific recommendations regarding use of the most current ASCE standards. Specifically, the commenter recommended that HUD incorporate the proposed rule's reference the 2022 edition of Minimum Design Loads for Buildings and Other Structures (ASCE/SEI 7-22). The comment explained that the standard provides the most up-to-date and coordinating loading provisions for general structural design, prescribes design loads for many types of hazards, and coordinates with other current structural material standards. In particular, the ASCE/SEI 7-22 standard updates wind, snow, seismic, rain, ice, and flood hazards to reflect the current state of practice and understanding of environmental hazards. The commenter further explained that the ASCE/SEI 7-22 standard refines wind loads to make use of the current knowledge of wind hazards and recent changes in wind speeds and also make use of new understandings of snowfall and wind effects on drift. The commenter concluded by stating that requiring new manufactured housing to comply with the state of practice, as defined by the latest standards of practice, will facilitate equitable, sustainable, and resilient infrastructure, will result in an improved standard of living and lower life-cycle costs and reinforce the Administration's goals and better

protect public health, safety, welfare, and environmental resilience.

HUD Response: HUD appreciates these comments and requests that the commenter submit proposed code changes to be reviewed by the MHCC, for the same reasons described previously. For reference standard version changes, HUD requests that copies of the specific version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Updating to FEMA P-85

One commenter recommended that HUD incorporate FEMA P-85 as a reference standard and generally advised that HUD use the current versions of each standard.

HUD Response: HUD appreciates this comment and requests that the commenter submit this proposed code change to be reviewed by the MHCC with a specific version, referenced by date and year, that is to be considered for incorporation. As described in this preamble, the HUD has a statutory responsibility to place the public on notice regarding standards upon which it may take future enforcement action. Additionally, the specific standard incorporated into the MHCSS must first be reviewed and recommended to HUD by the MHCSS. Standards cannot be broadly incorporated into regulations to reference a “current version” and must be defined by name and date. HUD requests that copies of the specific version proposed for incorporation be included with the proposal. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Testing of Energy Efficiency Compliance for Gas-Fired Water Heaters in § 3280.707(d)(2)

A commenter recommended that HUD incorporate applicable regulatory requirements established by the Department of Energy, rather than ANSI Standard Z21.10.1, in relation to the testing of energy efficiency compliance for gas-fired water heaters. The commenter explained that the relevant requirements had been removed from the ANSI Z21.10.1 standard.

HUD Response: HUD appreciates this comment and requests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously. The public may submit proposed standards via the internet at mhcc.homeinnovation.com. While the MHCC considers the recommendation mentioned above for gas-fired water heaters, HUD wishes to remind

manufacturers that they must comply with all applicable statutory and regulatory requirements, including the Federal energy efficiency requirements for covered products and equipment such as residential water heaters, central air conditioners, and central heat pumps, even if they are not otherwise stated in the rule or impose obligations distinct from or additional to any obligations imposed by this rule.

Requirements for Windows, Sliding Glass Doors, and Skylights

One commenter recommended that HUD add the following language to § 3280.403, requirements for windows, sliding glass doors, and skylights. “All such windows and doors must show evidence of certification by affixing a quality certification label to the product from a product certification body accredited to ISO/IEC 17065 by an accreditation body that is internationally recognized to ISO/IEC 17011 and are signatories to international mutual recognition arrangements such as the Asia Pacific Accreditation Cooperation (APAC).” Another commenter recommended that HUD use updated ANSI Z97.1 (R2020).

HUD Response: HUD appreciates this comment and requests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Laboratory Testing Requirements

One commenter recommended that HUD require testing laboratories to be accredited to ISO/IEC 17025 by an accreditation body that is internationally recognized to ISO/IEC 17011 and are signatories to international mutual recognition arrangements like the Asia Pacific Accreditation Cooperation.

HUD Response: HUD appreciates this comment and requests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously addressing need for consensus review and public notification. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Standard for Vinyl Siding and Polypropylene Siding Used in Manufactured Homes

One commenter requested clarification regarding how to proceed when the vinyl siding manufacturer’s installation instructions and the Vinyl Siding Institute Installation Manual (VSIIM) contradict one another.

Specifically, the commenter requested clarity on which set of instructions should take priority.

HUD Response: HUD does not reference the VSIIM. The final rule states under § 3280.309(c): “Vinyl siding and soffit installation must be installed in accordance with the manufacturer’s installation instructions. Vinyl siding and soffit installation must be based on ASTM D4756.” It is the manufacturer’s responsibility to ensure that its installation instructions are in accordance with ASTM D4756.

Reference to ASTM D4756 in § 3280.309(c)

One commenter expressed concerns about the reference to ASTM D4756 in the section on installation of vinyl siding and soffit installation in § 3280.309(c). The commenter recommended removal of the sentence which referenced ASTM D4756. The commenter explained that D4756 is an outdated standard that will be balloted for withdrawal as an ASTM standard under ASTM D20/D20.24. Furthermore, the commenter believed that manufacturer installation instructions and specifications should provide sufficient guidance. The commenter expressed concern about regulatory obligations to follow both manufacturer installation instructions and ASTM D4756, given that the two could differ. Another commenter stated that ASTM D4756-06 references ASTM E2112-07, and an 88-page standard for flashing installation. The commenter requested clarification on the standards that should be followed when there are contradictions between ASTM D4756-06 and ASTM E2112-07.

HUD Response: HUD acknowledges this comment and suggests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously. The public may submit proposed standards via the internet at mhcc.homeinnovation.com. The MHCSS does not reference ASTM E2112-07. Although ASTM D4756 has been withdrawn, the standard is still available for public access and use and is included in the final rule until it can be revised by future rulemaking after consideration and recommendation by the MHCC.

Omission of § 3280.504(b)

One commenter noted that § 3280.504(b) references § 3280.504(b)(1) but that the proposed rule does not contain § 3280.504(b)(1). It suggests that following language be added: “§ 3280.504(b)(1) Exterior walls must have a vapor retarder with a permeance

no greater than 1 perm (dry cup method) installed on the living space side of the wall; OR”.

HUD Response: The language offered by the commenter can be found in the proposed rule at 3280.504(b)(1). The language states: “(1) Exterior walls shall have a vapor barrier no greater than 1 perm (dry cup method) installed on the living space side of the wall, or.” The final rule maintains the language found in the proposed rule without change.

Floor Area Requirements

Some commenters recommended that HUD re-evaluate the 150 square footage requirements in light of the allowance of three dwellings within a single manufactured home. The commenters noted that the 2015 IRC had reduced the size requirement for a habitable room to 70 square feet. Some commenters noted that the 150 number had not been based on scientific analysis or on identified safety hazards. The commenters recommended the following language in § 3280.109: “Each dwelling unit of a manufactured home shall have at least one living area with not less than 70 square feet of gross floor area”.

HUD Response: HUD acknowledges this comment and suggests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously addressing need for consensus review and public notification. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Clarity on the Meaning of “Exposed” (§ 3280.203(c)(1)(ii))

One commenter recommended the following language to clarify what surfaces are not considered “exposed”: “Exposed bottoms and sides of kitchen cabinets as required by § 3280.204; vertical surfaces above the horizontal plane formed by the bottom of the range hood are not considered exposed.”.

HUD Response: HUD acknowledges this comment but is of the opinion that the existing language which states, “Exposed bottoms and sides of kitchen cabinets as required by § 3280.204 except that non-horizontal surfaces above the horizontal plane formed by the bottom of the range hood are not considered exposed,” is sufficiently clear. HUD’s view is that “non-horizontal surfaces” is a more inclusive terminology than the alternate language proposed in the comment and more clearly describes which surfaces do not need to be considered as exposed. In the final rule, § 3280.203(c)(1)(ii) reads as follows: “Exposed bottoms and sides of kitchen cabinets as required by § 3280.204 except that non-horizontal

surfaces above the horizontal plane formed by the bottom of the range hood are not considered exposed.”

Moisture Content of Treated Lumber Used for Porch Designs

One commenter recommended that § 3280.304(a) add following language regarding porch designs with treated lumber extending into the main roof cavity: “Dimension and board lumber must not exceed 19 percent moisture content at time of installation. Treated lumber used for exterior purposes only *and does not extend into the main home construction* may have a moisture content exceeding 19 percent.”.

HUD Response: HUD accepts this comment and has added the language as suggested to provide additional clarity that the moisture content for treated lumber applies to porches and exterior applications only.

Requirements for Fireplace and Wood Stoves

One commenter expressed concern about HUD’s proposed revision to allow any fireplace or wood stove to be installed regardless of the testing and certification requirements specified by the Standard for Vented Gas Fireplace Heaters, CSA/ANSI Z21.88–2109 * CSA 2.33–2019. The commenter worried that using an appliance not tested and certified for manufactured homes might violate the listing and certification of the product.

HUD Response: HUD acknowledges this comment but reassures the commenter that if an installed product violates its listing and certification when installed in a manufactured home, then it would not be permissible under § 3280.709(a).

Drain Pan Requirements

Some commenters recommended that the § 3280.709(h) requirement for drain pan should be revised to facilitate the use of tankless water heaters. They recommended the following language in § 3280.709 to better align with the IRC P2801.6: “A corrosion-resistant water drip collection and drain pan must be installed under each *storage tank-type water heater or a hot water storage tank* that will allow water leaking from the water heater to drain to the exterior of the manufactured home, or to a drain.”

HUD Response: HUD accepts this comment and has added the language as suggested to support clarity for the allowed use of tankless water heaters included in this final rule.

Clarity on Appliance Installation Instruction Requirements

Some commenters expressed support for HUD’s attempt to reduce redundant appliance manuals but suggested that there might be need for further clarity in the language used in the proposed rule. They suggested the following language: “Operating instructions must be provided for each appliance. The operating instructions for each appliance must be provided with the homeowner’s manual unless the appliance is affixed with a permanent Quick Response (QR) Code.”

HUD Response: HUD acknowledges this comment, but the suggested language is not in line with the change implemented in the final rule. HUD requires one copy of the operating instructions for each application to be provided with the homeowners’ manual. A second copy shall be provided with the appliance only if the appliance does not have a QR code. The final rule text has been slightly adjusted to clarify HUD’s requirement.

Appliance Manufacturer Instructions

One commenter expressed concern that revision of § 3280.709(a) to remove a requirement that manufacturers leave appliance manufacturer instructions attached to appliances would conflict with the safety standards and fuel gas installation code requirements.

HUD Response: HUD acknowledges this comment but this change implemented in the final rule does not conflict with the safety standards and fuel gas installation code requirements. HUD still requires one copy of the operating instructions for each application to be provided with the homeowners’ manual and a second copy shall be provided with the appliance only if the appliance does not have a QR code. In response to this comment, HUD has slightly revised the text under § 3280.711 to clarify this.

Reference to Loose-Fill Insulation

A commenter expressed concern about the portion of the proposed rule referencing “[a] horizontal distance of not less than the depth of the wall cavity, where the call [sic] cavity is filled with cellulose loose-fill or other loose-fill insulation.” The commenter recommended that the language be changed to read, “where the wall cavity is filled with loose-fill insulation” to reduce the possibility that the rule would be understood to relate to cellulose insulation only. The commenter noted that the insulation market contains many loose-fill insulation types apart from cellulose and the change would reduce confusion.

HUD Response: HUD accepts this comment and has revised the language as suggested to provide additional clarity. The amended language can be found at § 3280.215(d)(2)(i)(B).

Windows and Doors Protections

One commenter recommended adding an exception to § 3280.403 that provisions for protection of openings of manufactured homes be required in construction for homes installed in wind-borne debris regions (reference definition in the IRC). The commenter stated that provision of protection can be defined by the IBC.

HUD Response: HUD acknowledges this comment and suggests that the commenter submit this proposed code change to be reviewed by the MHCC, for the same reasons described previously addressing need for consensus review and public notification. The public may submit proposed standards via the internet at mhcc.homeinnovation.com.

Implementation Period

Several commenters requested a minimum one-year implementation period because of the quantity of changes that the proposed rule would create to relevant regulatory requirements. They noted that the proposed rule included 69 updates to reference standards, 16 new standards, and three regulatory text changes. Other commenters specifically requested that HUD provide both an effective date, *i.e.*, when the rule will be effective, and a mandatory effective date, *i.e.*, when compliance would become mandatory; the commenters suggested a 90-day period between the two dates to permit product inventory and materials to be used to meet the standards. Two commenters noted the challenges associated with the reference standards in § 3280.4, which would require manufacturers to analyze and apply the numerous standards and codes to a wide range of components. These commenters also noted that compliance will necessitate consultation with production suppliers, DAPIAs, and IPIAs.

One commenter noted that a longer implementation period was necessary because of the burdens associated with the May 2022 Final Rule to Establish Energy Conservation Standards for Manufactured Housing requiring manufactured homes to comply with the 2021 International Energy Conservation Code by May 2023. Another commenter pointed out that the United States Department of Energy (DOE) had released a Final Rule requiring compliance with 10 CFR part 460 Energy Conservation Standards for

Manufactured Homes (May 31, 2022, 87 FR 32728; May 30, 2023, 88 FR 34411), which had allowed for a one-year implementation period, suggesting that HUD use this lengthy implementation period as a model.

Another commenter noted that the U.S. Department of Energy published a proposed rule entitled Energy Conservation Standards for Consumer Furnaces, (July 7, 2022, 87 FR 40590), which proposed a five-year implementation period for changes that the commenter suggested were much less significant. Commenters also referenced, in support of their request for a longer implementation period, previous extensions on implementation of HUD rules.

HUD Response: HUD understands these comments and has provided a six-month delayed effective date to allow manufacturers to implement the regulations effectively. This effective date will allow for smoother implementation and improved alignment between regulatory requirements and stakeholders' capabilities. HUD did not provide the full year implementation because many of the changes in this final rule support construction practices already in place by manufacturers, and will eliminate the need for alternative construction letters, improving efficiencies, and costs. HUD is not implementing bifurcated deadlines because such deadlines would likely create confusion among manufacturers regarding the effective dates, much to the detriment of consumers and manufacturers alike.

Cost Considerations

One commenter recommended that HUD accommodate the entry level of the market even as it permits new, high-end construction methods. The commenter urged that when HUD assesses the costs and benefits of minimum quality and safety standards that raise the legal quality floor of MHCSS construction, that HUD consider that the housing alternatives for the marginal consumer priced out of an entry-level MHCSS home that are not built to the updated codes. The commenter stated that increased up-front purchase prices that produce later savings to ultimately reduce the total cost of ownership is an appropriate consideration. The commenter recommended that lifecycle cost analyses justifying those changes should include, in their sensitivity analysis, a scenario with a discount rate equal to an index average MHCSS home chattel loan rate. Chattel loan rates, according to the commenter, can exceed OMB's standard 3 percent and 7 percent real discount rates for cost-benefit

analysis. Consumers must finance higher up-front costs that deliver future benefits with the current financing options. Actual financing costs must be considered in the lifecycle cost analysis to guarantee real, all-in consumer savings are achieved.

HUD Response: HUD acknowledges these comments. Manufactured housing plays a vital role in meeting the housing needs in the U.S. today and provides a significant resource for affordable homeownership and rental housing accessible to all Americans. HUD recognizes the need to protect the affordability of manufactured homes to facilitate the availability of housing particularly for economically constrained consumers and recognizes the need for improved financing options supporting manufactured housing. While these issues extend beyond the scope of this regulation, several offices within the Federal Government in addition to the Department are actively working to address financing issues for manufactured housing, such as the Federal Housing Finance Agency and U.S. Department of Agriculture's Rural Development agency.

Other Issues

Issue 1: One commenter recommended that HUD mandate floating homes and require that homes be made of 'indestructible' material such as stone or an ice chest. This comment was submitted alongside a screenshot of text describing "Surface Roughness D" and a graphic unrelated to the proposed rule.

HUD Response: HUD acknowledges this comment and as previously discussed in these responses, encourages members of the public to submit proposals and suggestions to the MHCC for consideration at mhcc.homeinnovation.com.

Issue 2: One commenter recommended that regular updates be made to the MHCSS at least every 10 years. Another commenter echoed this concern and advised HUD to adopt a regular cadence of updating regulations so that the MHCSS can keep pace with evolving technologies and best practices.

HUD Response: HUD acknowledges this comment and fully agrees with the need for regular code updates to keep pace with evolving technologies and best practices. In recent years, HUD has made significant progress in updating its regulations, but continues to face hurdles that slow down the cadence of updates. For example, the regulatory process mandating consensus committee review and recommendation is a vital component to ensure that

HUD's manufactured housing standards and regulations consider and align the interests of manufactured housing consumers, industry stakeholders, and the government, particularly in respect to affordability, home quality, and consumer protection. This statutory process, however, adds in a layer of complexity and duration that most other Federal rulemaking is not subjected to.

Issue 3: Without specifying any particular aspects of the proposed rule, two commenters expressed general concerns that the rule would undermine the affordability of MHCSS homes. One commenter explained that he viewed the requirements as so strict as to exceed the requirements for IRC homes and site-built homes in the same location.

HUD Response: HUD acknowledges but disagrees with this comment. Furthermore, as previously described, HUD is not updating the reference standard for wind load design in this final rule that may have been a cause of concern for some members of the public.

Issue 4: One commenter laid out several general standards that it believed should guide HUD's rulemaking in this area. First, the commenter stated that Federal modular standards ought to align with State modular codes in order to mitigate conflict and allow for increased product availability. Second, the commenter recommended that HUD permit alternative building methods and materials without third-party testing, so long as the engineer signed off, in order to encourage innovation. Third, the commenter advised that structural requirements are preferable to specification of building materials and structures, such as steel I-beams or chassis requirements. The former reduce costs and unnecessary design elements, while still advancing building design and integrity, according to the commenter. Fourth, the commenter believed that quality control measures at assembly line factories were sufficient and that unnecessary factory inspections should be reduced. And, fifth, the commenter believed that the MHCSS should be made the national standard and it should cover every building type and situation covered in the regular building code.

HUD Response: HUD acknowledges this comment and as previously discussed in these responses, encourages members of the public to submit proposals and suggestions to the MHCC for consideration at mhcc.homeinnovation.com.

Issue 5: One commenter recommended that HUD incorporate

"universal design and Visitability." The Commenter also recommended that HUD provide safety standards for homes built on partial foundations.

HUD Response: HUD acknowledges this comment and supports the concept of accessible and inclusive housing for all individuals. As previously discussed in these responses, HUD encourages members of the public to submit proposals and suggestions to the MHCC for consideration at mhcc.homeinnovation.com.

Issue 6: One commenter flagged what it believed to be a typographical error in § 3280.607 in which "with sides and back extending" repeated twice. The commenter recommended deleting the second set of words to remedy the duplicative language.

HUD Response: HUD did not find this duplicative language in the proposed rule and has verified that this also does not exist in the final rule.

Issue 7: One commenter asked HUD what she could do to make her home more fire resistant. She said that she had been told her manufactured home wasn't as safe as a site-built home and that she was having difficulty getting homeowners insurance as a result.

HUD Response: HUD acknowledges this comment and while it is not related to the final rule, would like to respond that the National Fire Protection Association (NFPA) provides a Manufactured Home Fire Safety Guide that offers tips and recommendations for homeowners to reduce fire risks in their homes. This guide covers topics such as smoke alarms, cooking safety, heating safety, electrical safety, and escape planning. In addition, homeowners may have additional resources available to make their homes more fire-resistant including programs offered by local fire departments or State and local government programs that can help manufactured homeowners make improvements and upgrades for fire safety. Some programs may provide financial assistance, grants, or low-interest loans to support the installation of fire-resistant materials, such as fire-rated siding, roofing, and windows, that may assist in qualifying for some insurance programs. HUD encourages the commenter to start by contacting their local government to inquire about available resources for fire safety improvements.

Issue 8: One commenter recommended that HUD take several measures to improve the effectiveness of the rule outside of changing the drafting of the rule. Specifically, it recommended that HUD experts in manufactured housing participate in the development of HUD's Affirmatively

Furthering Fair Housing (AFFH) rulemaking to ensure that the AFFH standards support increased access to manufactured homes. It advised that such experts be vigilant for exclusionary zoning and building practices targeting manufactured homes. It also recommended that HUD's intergovernmental relations staff should coordinate with HUD's manufactured housing staff to promote state-level reforms allowing easy conversion of MHCSS homes from personal chattel property into real property and to inform Congress of the barriers to the success of manufactured housing that require legislative efforts. Finally, it recommended that HUD updated grant scoring and prioritization to reward jurisdictions that permit multifamily housing of all construction efforts.

HUD Response: HUD acknowledges these comments and while these comments do not directly impact HUD's final rule, appreciates the public's interest in HUD's programs. HUD is actively working to increase cross-collaboration within the Department to improve knowledge sharing and leverage shared resources.

IV. Incorporation by Reference

A. Introduction

The incorporated reference standards are approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These standards are available for inspection at HUD's Office of Manufactured Housing Programs. Copies of the incorporated reference standards may also be obtained from the following organizations that developed the standard:

- AISC—American Institute of Steel Construction, One East Wacker Drive, Chicago, IL 60601, (312) 670-5403, www.aisc.org.
- AISI—American Iron and Steel Institute, 25 Massachusetts Ave. NW, Suite 800, Washington, DC 20001, (202) 452-7100, www.steel.org.
- ANSI—American National Standards Institute, 25 West 43rd Street, New York, NY 10036, (212) 642-4900, fax (212) 398-0023, www.ansi.org.
- APA—The Engineered Wood Association (formerly the American Plywood Association), 7011 South 19th Street, Tacoma, WA 98411, (253) 565-6600, fax (253) 565-7265, www.apawood.org.
- ASHRAE—American Society of Heating, Refrigerating, and Air Conditioning Engineers, 180 Technology Parkway NW, Peachtree Corners, Atlanta, GA 30092, (404) 636-8400, fax (404) 321-5478, www.ashrae.org.
- ASME—American Society of Mechanical Engineers, 22 Law Drive, P.O. Box 2900,

Fairfield, NJ 07007, 1-800 843-2763, fax: 973882-8113, www.asme.org.

ASTM—ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, (610) 832-9500, fax (610) 832-9555, www.astm.org.

AWC—American Wood Council (formerly American Forest & Paper Association), 1101 K Street NW, Suite 700, Washington, DC 20005, (202) 463-2766, www.awc.org.

FGIA—Fenestration and Glazing Industry Alliance (formerly known as American Architectural Manufacturers Association (AAMA)), 1900 East Golf Road, Schaumburg, Illinois 60173, (847) 303-5664, www.fgiaonline.org.

CSA Group—CSA Group (formerly known as the Canadian Standards Association (CSA)), 178 Rexdale Boulevard, Toronto, ON, M9W 1R3, Canada; (216) 524-4990; www.csagroup.org.

HPVA—Hardwood Plywood and Veneer Association, 1825 Michael Faraday Drive, P.O. Box 2789, Reston, VA 22090, (703) 435-2900, fax (703) 435-2537, www.hpva.org.

IAPMO—International Association of Plumbing and Mechanical Officials, 20001 Walnut Drive South, Walnut, CA 91789, (909) 595-8449, fax (909) 594-1537, www.iapmo.org.

ICC—ES—International Code Council Evaluation Service, 3060 Saturn Street, Suite 100, Brea, CA 92821, (800) 423-6587, fax (562) 695-4694, www.icc-es.org.

ISO—The International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, 41-22-749-0111, www.iso.org.

NFPA—National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, (617) 770-3000, fax (617) 770-0700, www.nfpa.org.

SAE—Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096, (724) 776-0790, www.sae.org.

TPI—Truss Plate Institute, 583 D'Onofrio Drive, Suite 200, Madison, WI 53719, (608) 833-5900, fax (608) 833-4360, www.tpinst.org.

JUL—Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062, (847) 272-8800, fax (847) 509-6257, www.ul.com.

WDMA—Window and Door Manufacturers Association (formerly the National Wood Window and Door Association), 1400 East Touhy Avenue, Des Plaines, IL 60018, (847) 299-5200, fax (847) 299-1286, www.wdma.com.

Any standard that appears in §§ 3280.304, 3280.604, or 3280.703, but that is not included in the list of new or updated consensus standards, was previously approved for incorporation by reference into that section. In addition, the following standards were previously approved for incorporation by reference in the sections where they appear in this final rule: ASSE 106, ASSE 1070, SEI/ASCE 8, UL, 181B, UL 217.

B. List of New Consensus Standards

This final rule incorporates by reference 16 new consensus standards for Manufactured Housing, which are listed below:

1. *ANSI Z21.10.3-2014/CSA 4.3-2014*. Gas-fired water heaters, volume III, storage water heaters with input ratings above 75,000 Btu per hour, circulating and instantaneous. The rule adds this new standard for incorporation by reference. This new standard specifies guidelines for newly produced, large automatic storage water heaters having input ratings above 75,000 Btu/hr (21 980 W), instantaneous water heaters, and circulating water heaters including booster water heaters, constructed entirely of new, unused parts and materials. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

2. *ANSI Z21.75-2007/CSA 6.27-2007 (reaffirmed 2012)*. Connectors for Outdoor Gas Appliances And Manufactured Homes. This rule adds a standard for incorporation by reference that specifies guidelines for newly produced assembled connectors constructed entirely of new, unused parts and materials. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

3. *APA Y510-1997*. Plywood Design Specification. The rule adds this standard for incorporation by reference. The standard is a specification that presents section properties, recommended design stresses, and design methods for plywood when used in building construction and related structures. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

4. *ASTM D3679-09a*. Standard Specification for Rigid Poly(Vinyl Chloride) (PVC) Siding. This rule adds this standard for incorporation by reference. This specification establishes requirements and test methods for the materials, dimensions, warp, shrinkage, impact strength, expansion, appearance, and wind load resistance of extruded single-wall siding manufactured from rigid (unplasticized) PVC compound. This standard is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

5. *ASTM D4756-06*. Standard Practice for Installation of Rigid Poly(Vinyl Chloride) (PVC) Siding and Soffit. This rule adds this standard for incorporation by reference. This standard covers the minimum requirements for and the

methods of installation of rigid vinyl siding, soffits, and accessories on the exterior wall and soffit areas of buildings. This standard also covers aspects of installation relating to effectiveness and durability in service. This standard is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

6. *ASTM D7254-07*. Standard Specification for Polypropylene (PP) Siding. The rule adds this standard for incorporation by reference. This new specification establishes requirements and test methods for materials, impact strength, appearance, surface flame spread, and wind load resistance of siding products manufactured from polypropylene material. This standard is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

7. *ASTM E90-09*. Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements. This rule adds this standard for incorporation by reference. This test method covers the laboratory measurement of airborne sound transmission loss of building partitions such as walls of all kinds, operable partitions, floor-ceiling assemblies, doors, windows, roofs, panels, and other space-dividing elements. This standard is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

8. *ASTM E492-09*. Standard Test Method for Laboratory Measurement of Impact Sound Transmission Through Floor-Ceiling Assemblies Using the Tapping Machine. This rule adds this standard for incorporation by reference. This test method covers the laboratory measurement of impact sound transmission of floor-ceiling assemblies using a standardized tapping machine. This standard is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

9. *ASTM E814-13*. Standard Test Method for Fire Tests of Penetration Firestop Systems. This rule adds this standard for incorporation by reference. This standard is used to measure and describe the response of materials, products, or assemblies to heat and flame under controlled conditions. This standard contemplates fire testing that evaluates a firestop under fire conditions to determine if it will gain firestop status. It addresses areas of building construction where firestop systems are necessary to contain fire from spreading from one area to another around penetrating items. This standard

is available online for review via read-only, electronic access at <https://www.ASTM.org/READINGLIBRARY>.

10. *ISO/IEC 170065:2012(E)*. Conformity Assessment—Requirements for bodies certifying products, processes, and services. The rule adds this standard for incorporation by reference. This International Standard contains requirements for the competence, consistent operation and impartiality of product, process and service certification bodies. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

11. *NFPA 13D*. Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes. The rule adds this standard for incorporation by reference. This standard covers the design, installation, and maintenance of automatic sprinkler systems for protection against the fire hazards in one- and two-family dwellings and manufactured homes. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

12. *TT-P-1536A*. Plumbing Fixture Setting Compound. The rule adds this standard for incorporation by reference. This standard covers materials that combine watertight, gastight, odor proof, and vermin proof properties for plumbing fixtures which are connected to drainage systems. This standard is available online for review via read-only, electronic access at <http://www.everyspec.com>. The Federal Specification may also be obtained from the General Services Administration, which serves as Superintendent of Documents.

13. *UL 263*. Standard for Safety Fire Tests of Building Construction and Materials. The rule adds this standard for incorporation by reference. These fire tests are applicable to assemblies of masonry units and composite assemblies of structural materials for buildings, including bearing and other walls and partitions, columns, girders, beams, slabs, and composite slab and beam assemblies for floors and roofs. They are also applicable to other assemblies and structural units that constitute permanent integral parts of a finishing building. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

14. *UL 499*. Standard for Safety Electric Heating Appliances. The rule adds this standard for incorporation by reference. These requirements cover heating appliances rated at 600 V or less for use in unclassified locations in

accordance with the National Electrical Code (NEC), NFPA 70–2014. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

15. *UL 1479*. Standard for Fire Tests of Penetration Firestops. This rule adds this standard for incorporation by reference. This standard provides testing requirements of penetration firestops of various materials and construction that are intended for use in openings in fire resistive wall, floor, or floor-ceiling assemblies, and membrane type penetration firestops of various materials and construction that are intended for use in openings in fire resistive wall assemblies. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

16. *UL 60335-2-40-2012*. Standard for Safety: Household and Similar Electrical Appliances—Part 2-40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers. The rule adds this standard for incorporation by reference. This standard deals with the safety of sealed (hermetic and semi-hermetic type) motor-compressors, their protection and control systems, if any, which are intended for use in equipment for household and similar purposes and which conform with the standards applicable to such equipment. This standard is available online for review via read-only, electronic access at <https://ibr.ansi.org/Standards>.

C. List of Updated Consensus Standards

This final rule incorporates by reference updates to 74 consensus standards for manufactured housing:

1. *AAMA 1701.2-12*. Voluntary Standard for Utilization in Manufactured Housing for Primary Windows and Sliding Glass Doors. The rule updates AAMA 1701.2 to the 2012 version. This updated standard sets the requirements for primary windows and sliding glass doors used in manufactured housing. Window mounted as components in entry doors are beyond the scope of this standard. Since building methods and materials are expected to undergo continued design innovation, the purpose of this standard is to establish reasonable performance standards for all present and future methods and materials of construction.

2. *AAMA 1702.2-12*. Voluntary Standard for Utilization in Manufactured Housing for Swinging Exterior Passage Doors. The rule updates AAMA 1702.2, Voluntary Standard Swinging Exterior Passage Door for Utilization in Manufactured

Housing. This updated standard sets requirements for swinging exterior passage doors and combination doors used in manufactured housing. Windows used in swinging exterior passage doors are components of the door and are thus included in this standard. Since building methods and materials are expected to undergo continued design innovation, the purpose of this standard is to establish reasonable performance standards for all present and future methods and materials of construction.

3. *AAMA 1704-12*. Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing. The rule updates the AAMA Standard 1704, which sets the requirements for the design, construction, and installation of egress window systems.

4. *AAMA/WDMA/CSA 101/I.S.2/A440-17*. North American Fenestration Standard/Specification for windows, doors, and skylights. The rule updates AAMA/WDMA/CSA 101/I.S.2/A440. The updated standard establishes material-neutral, minimum, and optional performance requirements for windows, doors, secondary storm products, tubular daylighting devices, roof windows, and unit skylights. The specification concerns itself with the determination of performance grade, design pressure, and related performance ratings.

5. *AISC 360-10*. Specification for Structural Steel Buildings. The rule updates AISC–S335, 1989. This updated specification provides the generally applicable requirements for the design and construction of structural steel buildings and other structures.

6. *AISI S100-12*. North American Specification for the Design of Cold-Formed Steel Structural Members. The rule updates AISI, Specification for the Design of Cold-Formed Steel Structural Members, 1996. This updated specification provides the general applicable requirements for the design of cold-formed steel structural members used in North America.

7. *ANSI/AHRI Standard 210/240-2008 with Addenda 1 and 2*. 2008 Standard for Performance Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment. The rule updates ANSI/ARI 210/240, Unitary Air-Conditioning and Air-Source Heat Pump Equipment. This updated standard establishes definitions, classifications, test requirements, rating requirements, minimum data requirements for published ratings, operating requirements, marking and nameplate data, and conformance conditions for Unitary Air-Conditioners and Air-Source Unitary Heat Pumps.

8. *ANSI A135.4–2012*. Basic Hardboard. The rule updates ANSI/AHA A135.4–1995. This updated standard covers requirements and test methods for water resistance, thickness swelling, modulus of rupture, tensile strength, surface finish, dimensions, squareness, edge straightness, and moisture content of five classes of basic hardboard. This standard requires test methods determined by the ASTM, International where appropriate and provides methods of identifying hardboard that is compliant.

9. *ANSI/A135.5–2012*. Prefinished Hardboard Paneling. The rule updates ANSI/AHA A135.5–1995. This updated standard covers requirements and methods of testing for the dimensions, squareness, edge straightness, and moisture content of prefinished hardboard paneling and for the finish of the paneling. Methods of identifying products which conform to ANSI A135.5 are included in the standard.

10. *ANSI A135.6–2012*. Engineered Wood Siding. The rule updates ANSI/AHA A135.6–1998. The updated standard sets requirements and methods of testing for the dimensions, straightness, squareness, physical properties, and surface characteristics of engineered wood siding at the time of manufacture.

11. *ANSI A208.1–2009*. Particleboard. The rule updates ANSI A208.1–1999. The updated standard sets forth requirements and test methods for dimensional tolerances, physical and mechanical properties, and formaldehyde emissions for particleboard. Methods of identifying products conforming to the standard are specified.

12. *ANSI LC 1–2014/CSA 6.26–2014*. Fuel gas piping systems using corrugated stainless steel tubing. The rule updates ANSI/IAS LC 1–1997. This updated standard provides the applicable requirements for the installation of natural and propane gas piping systems using corrugated stainless steel tubing in residential, commercial, or industrial buildings. This includes requirements for the installation of corrugated stainless steel piping systems in which portions of the piping are exposed to the outdoors as required to make connections to outdoor gas meters or to outdoor gas appliances, which are attached to, mounted on, or located near the building structure.

13. *ANSI Z21.1–2016/CSA 1.1–2016*. Household cooking gas appliances. The rule updates ANSI Z21.1–2000. This updated standard specifies guidelines for the newly produced household cooking gas appliances constructed entirely of new, unused parts and

materials. These appliances may be floor-supported or built-in.

14. *ANSI Z21.5.1–2015/CSA 7.1–2015*. Gas clothes dryers, volume I, type 1 clothes dryer. The rule updates ANSI Z21.51.1–1999. The updated standard specifies guidelines for newly produced Type 1 clothes dryers constructed entirely of new, unused parts and materials for use with natural gas, manufactured gas, mixed gas, propane gas, LP gas-air mixtures, and for mobile home installation.

15. *ANSI Z21.10.1–2014/CSA 4.1–2014*. Gas water heaters, volume I, storage water heaters with input ratings of 75,000 Btu per hour or less. The rule updates ANSI Z21.10.1–1998. This updated standard specifies guidelines for newly produced, automatic storage water heaters having input ratings of 75,000 Btu/hr (21 980 W) or less, hereinafter referred to as water heaters or appliances, constructed entirely of new, unused parts and materials.

16. *ANSI Z21.15–2009 (reaffirmed 2019)/CSA 9.1–2009 (reaffirmed 2019)*. American National Standard/CSA Standard for Manually Operated Gas Valves for Appliances, Appliance Connector Valves, and Hose End Valves. The rule updates ANSI Z21.15–1997. This updated standard applies to manually operated gas valves not exceeding 4 inch (102 mm) pipe size, and pilot shut-off devices.

17. *ANSI Z21.19–2014/CSA 1.4–2014*. Refrigerators using gas fuel. The rule updates ANSI Z21.19–1990. This updated standard specifies guidelines for gas-fired refrigerators having refrigerated spaces for storage of foods, storage of foods and making ice, storage of frozen foods and making ice, or storage of foods and the storage of frozen foods and making ice. The standard applies to newly produced refrigerators constructed entirely of new, unused parts and materials.

18. *ANSI Z21.20–2014 (reaffirmed 2019)/CAN/CSA C22.2 No. 60730–2–5–14 (reaffirmed 2019)*. Automatic electrical controls for household and similar use—Part 2–5: Particular requirements for automatic electrical burner control systems. This rule updates ANSI Z21.20. This updated standard specifies guidelines for newly produced automatic gas ignition systems and components constructed entirely of new, unused parts and materials.

19. *ANSI Z21.21–2012/CSA 6.5–2012*. Automatic valves for gas appliances. This rule updates ANSI Z21.21–2000. This updated standard specifies guidelines for newly produced automatic valves constructed entirely of new, unused parts and materials. These

valves may be individual automatic valves or valves utilized as parts of automatic gas ignition systems. The standard also applies to commercial/industrial safety shutoff valves, also referred to as C/I valves.

20. *ANSI Z21.23–2000*. Gas Appliance Thermostats with ANSI Z21.23a–2003 and ANSI Z21.23b–2005 Addendums. This rule updates ANSI Z21.23–1993, which specifies guidelines for newly produced gas appliance thermostats of the integral gas valve type having a maximum operating gas pressure of ½ psi (3.5 kPa) or electric type:

a. ANSI Z21.23–2000, Gas Appliance Thermostats, Tenth Edition;

b. ANSI Z21.23a–2003, Addenda to the Tenth Edition of Gas Appliance Thermostats; and

c. ANSI Z21.23b–2005, Addenda to the Tenth Edition of ANSI Z21.23–2000 and Addenda Z21.23a–2003: Gas Appliance Thermostats.

21. *ANSI Z21.24–2006/CSA 6.10–2006 (reaffirmed 2011)*. Connectors for Gas Appliances. The rule updates ANSI Z21.24–1997/CSA 6.10–M97 and removes the reference to the Canadian Gas Association. This updated standard specifies guidelines for newly produced gas appliance connectors constructed entirely of new unused parts and materials, having nominal internal diameters of ¼, ⅜, ½, ⅝, ¾ and 1 inch, and having fittings at both ends provided with taper pipe threads for connection to a gas appliance and to house piping. Guidelines cover assembled appliance connectors not exceeding a nominal length of six (6) feet (1.83 meters). Connectors listed under this standard are intended for use with gas appliances not frequently moved after installation.

22. *ANSI Z21.47–2012/CSA 2.3–2012*. Standard for Gas-fired central furnaces. The rule updates ANSI Z21.47. The updated standard contains new and revised requirements for documentation and testing and sets forth basic standards for the safe operation, substantial and durable construction, and acceptable performance of gas-fired central furnaces.

23. *ANSI Z97.1–2009e*. American National Standard for safety glazing materials used in buildings—safety performance specifications and methods of test. The rule updates ANSI Z97.1–2004. This standard establishes the specifications and methods of test for the safety properties of safety glazing materials (glazing materials designed to promote safety and to reduce or minimize the likelihood of cutting and piercing injuries when the glazing materials are broken by human contact) as used for all building and architectural

purposes. The updated standard adds modifications and new material that add clarity of purpose, intent and procedures. Specifically, sections have been rewritten and new sections added to provide additional assurance that the intended safe-break characteristics have been achieved before a test specimen may be declared compliant. This reference standard impacts the HUD Code to define safety glazing materials used in glass and glazed openings such as windows and sliding glass doors, and hazardous locations requiring safety glazing.

24. *APA D510C*. Panel Design Specification. The rule replaces APA D410A–2004, Panel Design Specification, with this standard. This standard specifies guidelines for newly produced assembled connectors constructed entirely of new, unused parts and materials.

25. *APA E30V*. Engineered Wood Construction Guide. The rule updates APA E30R, Engineered Wood Construction Guide, revised January 2001. This standard specifies guidelines for the use of engineered wood for residential and commercial construction. It contains information on APA performance rated panels, glulam, I-joists, structural composite lumber, specification practices, floor, wall and roof systems, diaphragms and shear walls, fire-rated systems, and methods of finishing.

26. *APA H815G*. Plywood Design Specification Supplement 5–12, Design and Fabrication of All-Plywood Beams. The rule updates APA H815E–1995 to APA H815G. This standard presents recommended methods for the design and fabrication of staple-glued all-plywood beams. Allowable stresses and other design criteria are provided, as well as guidelines for beam fabrication.

27. *APA S811P*. Plywood Design Specification Supplement 1–12, Design and Fabrication of Plywood Curved Panels. The rule updates APA S811M–1990. This specification presents the recommended method for the design and fabrication of curved plywood roof panels spanning between load-bearing supports so that the stresses developed act circumferentially around the curve.

28. *APA S812S*. Plywood Design Specification Supplement 2–12, Design and Fabrication of Glued Plywood Lumber Beams. The rule updates APA S812R–1992. This updated specification presents the recommended method for the design and fabrication of glued plywood and lumber beams.

29. *APA U813M*. Plywood Design and Specification Supplement 3–12, Design and Fabrication of Plywood-Stressed Skin Panels. The rule updates APA

U813L–1992. The updated specification presents the recommended method for the design and fabrication of glued plywood stressed-skin panels.

30. *APA U814J*. Plywood Design Specification Supplement 4–12, Design and Fabrication of Plywood Sandwich Panels. The rule updates APA U 814H. This updated specification presents the recommended method for the design and fabrication of flat plywood sandwich panels.

31. *ANSI/ASHRAE Standard 62.2–2013*. Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings. The rule updates ANSI/ASHRAE 62.2. This updated standard describes the minimum requirements to achieve acceptable indoor air quality via dwelling-unit ventilation, local demand-controlled exhaust, and source control.

32. *ANSI/ASME B1.20.1–2013*. Pipe Threads, General Purpose (Inch). The rule updates ASME B1.20.1. This standard establishes specifications for wrought copper and wrought copper alloy, solder-joint, seamless fittings, designed for use with seamless copper tube conforming to ASTM B88 (water and general plumbing systems), B280 (air conditioning and refrigeration service), and B819 (medical gas systems), as well as fittings intended to be assembled with soldering materials conforming to ASTM B32, brazing materials conforming to AWS A5.8, or with tapered pipe thread conforming to ASME B1.20.1. This standard is aligned with ASME B16.18, which covers cast copper alloy pressure fittings, and provides requirements for fitting ends suitable for soldering. This standard covers pressure-temperature ratings, abbreviations for end connections, size and method of designating openings of fittings, marking, material, dimensions and tolerances, and tests.

33. *ANSI/ASME B36.10–2004*. Welded and Seamless Wrought Steel Pipe. The rule updates ASME B36.10. This standard covers the standardization of dimensions of welded and seamless wrought steel pipe for high or low temperatures and pressures. The word pipe is used, as distinguished from tube, to apply to tubular products of dimensions commonly used for pipeline and piping systems. Pipe NPS 12 (DN 300) and smaller have outside diameters numerically larger than their corresponding sizes. In contrast, the outside diameters of tubes are numerically identical to the size number for all sizes.

34. *ASTM A53/A53M–12*. Standard Specification for Pipe, Steel, Black, and Hot-Dipped, Zinc-Coated, Weldless and Seamless. The rule updates ASTM A53. This specification covers seamless and

welded black and hot-dipped galvanized steel pipe in NPS 1/8 to NPS 26. The steel categorized in this standard must be open-hearth, basic-oxygen, or electric-furnace processed, and must have specified chemical requirements. Testing requirements for seamless or welded tubing are provided in this standard.

35. *ASTM B42–10*. Standard Specification for Seamless Copper Pipe, Standard Sizes. The rule updates ASTM B42. This specification establishes the requirements for seamless copper pipe in all nominal standard pipe sizes, both regular and extra-strong, suitable for use in plumbing, boiler feed lines, and for similar purposes.

36. *ASTM B88–14*. Standard Specification for Seamless Copper Water Tube. The rule updates ASTM B88. The specification covers seamless copper water tube suitable for general plumbing, applications for the conveyance of fluids, and use with solder, flared, or compression-type fittings.

37. *ASTM B251–10*. Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube. The rule updates ASTM B251. This updated specification sets forth the general requirements for wrought seamless copper and copper-alloy tube.

38. *ASTM B280–13*. Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service. The rule updates ASTM B280. This specification sets forth the requirements for seamless copper tube intended for use in the connection, repairs, or alterations of air conditioning or refrigeration units in the field.

39. *ASTM C1396/C1396M–14a*. Standard Specification for Gypsum Board. The rule updates ASTM C 36/C 36M. This specification covers gypsum boards which include the following: gypsum wallboard for use on walls, ceilings, or partitions and that affords a surface suitable to receive decoration; predecorated gypsum board for use as the finished surfacing for walls, ceilings, or partitions; gypsum backing board, coreboard, and shaftliner board for use as a base in multilayer systems or as a gypsum stud or core in semisolid or solid gypsum board partitions, or in shaft wall assemblies; water-resistant gypsum backing board to be used as a base for the application of ceramic or plastic tile on walls or ceilings; exterior gypsum soffit board for exterior soffits and carport ceilings that are completely protected from contact with liquid water; gypsum sheathing board for use as sheathing on buildings; gypsum base for veneer plaster; gypsum lath for use

as a base for gypsum plaster application; and gypsum ceiling board for interior ceilings and walls.

40. *ASTM D4442-07*. Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood Base Materials. The rule updates ASTM D4442. The test methods cover the determination of the moisture content of wood, veneer, and other wood-based materials, including those that contain adhesives and chemical additives.

41. *ASTM D4444-13*. Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters. The rule updates ASTM D4444. These test methods cover the measurement of moisture content of solid wood products, including those containing additives (that is, chemicals or adhesives) for laboratory standardization and calibration of hand-held moisture meters.

42. *ASTM E96/E96M-13*. Standard Test Methods for Water Vapor Transmission of Materials. The rule updates ASTM E96. The test methods cover the determination of water vapor transmission rate of materials, such as, but not limited to, paper, plastic films, other sheet materials, coatings, foams, fiberboards, gypsum and plaster products, wood products, and plastics.

43. *ASTM E119-14*. Standard Test Method for Fire Tests of Building Construction and Materials. The rule updates ASTM E119. This standard contemplates fire test response criteria which is essential for fire safety. Testing per this standard establishes the duration for which a specific material or installation can contain a fire. This information helps to show insurance carriers, contractors, and other parties what might reasonably be expected in the event of a fire emergency.

44. *AWC 2012-Design Values for Joists and Rafters*. Design Values for Joists and Rafters. The rule updates AFPA, Design Values for Joists and Rafters 1992. This standard provides design values such as bending, compression, and modulus of elasticity for joists and rafters, and tabulates allowable bending (Fb) and modulus of elasticity (E) design values for visually graded and mechanically graded dimension lumber.

45. *AWC NDS-2015*. NDS: National Design Specification for Wood Construction. The rule updates ANSI/AFPA NDS. This specification defines the methods to be followed in structural design with the following wood products: visually graded lumber, mechanically graded lumber, structural glued laminated timber, timber piles, timber poles, prefabricated wood I-joists, structural composite lumber,

wood structural panels, and cross-laminated timber. It also defines the practice to be followed in the design and fabrication of single and multiple fastener connections using the fasteners described within it.

a. National Design Specification for Wood Construction, Design Values for Wood Construction; and
b. NDS Supplement.

46. *AWC 2012 Span Tables for Joists and Rafters*. Span Tables for Joists & Rafters. The rule updates AFPA, Span Tables for Joists and Rafters. This standard provides a simplified system for determining allowable joist and rafter spans for typical loads encountered in one- and two-family dwellings and is referenced in the *2012 International Building Code*.

47. *ANSI/HPVA HP-1-2009*. American National Standard for Hardwood and Decorative Plywood. The rule updates ANSI/HPVA HP-1. This standard sets forth the specific requirements for all face, back, and inner ply grades as well as formaldehyde emissions, moisture content, tolerances, sanding, and grade marking for hardwood and decorative plywood.

48. *IAPMO TS 9-2003*. Standard for Gas Supply Connectors for Manufactured Homes. The rule updates IAPMO TS 9. This standard applies to connectors for outdoor use consisting of flexible tubing depending on all-metal construction for gas tightness and having a fitting at each end provided with tapered pipe threads for connecting manufactured home gas piping to a manufactured home lot gas outlet or a crossover in multiple unit manufactured homes.

49. *ESR 1539*. ICC-ES Evaluation Report: Power Driven Staples and Nails. The rule updates NER-272, National Evaluation Report. This document contains design values and allowable load tables for individual nails and staples as well as for nailed or stapled shear walls that may not be listed in the Uniform Building Code.

50. *NPFA 31*. Standard for Installation of Oil Burning Equipment. The rule updates NFPA 31. This standard sets forth the requirements for the safe, efficient design and installation of heating appliances that use a liquid fuel, typically No. 2 heating oil, but also lighter fuels, such as kerosene and diesel fuel, and heavier fuels, such as No. 4 fuel oil.

51. *NFPA 54/ANSI Z223.1*. National Fuel Gas Code. The rule updates NFPA 54. This standard provides minimum safety requirements for the design and installation of fuel gas piping systems in homes and other buildings.

52. *NFPA 58*. Liquefied Petroleum Gas Code. The rule updates NFPA 58. This standard sets forth the requirements for safe liquefied petroleum gas storage, handling, transportation, and use. This standard mitigates risks and ensures safe installations, to prevent failures, leaks, and tampering that could lead to fires and explosions.

53. *NPFA 70*. National Electric Code. This rule updates NFPA 70. This standard sets forth the requirements for safe electrical design, installation, and inspection to protect people and property from electrical hazards. The purpose of this Code is the practical safeguarding of persons and property from hazards arising from the use of electricity.

54. *NFPA 90B*. Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. The rule updates NFPA 90B. This standard sets forth the requirements that cover the construction, installation, operation, and maintenance of systems for warm air heating and air conditioning, including filters, ducts, and related equipment to protect life and property from fire, smoke, and gases resulting from fire or from conditions having manifestations similar to fire.

55. *NIST PS-1-09*. Voluntary Product Standard: Structural Plywood (with Typical APA Trademarks). This rule adds this standard for incorporation by reference. The standard specifies guidelines for producing, marketing, and specifying plywood for construction and industrial uses. This standard is available online for review via read-only, electronic access at <https://www.nist.gov/document/docps1-09structuralplywoodpdf>.

56. *SAE J533 (REV SEP2007)*. (R) Flares for Tubing. The rule updates SAE J533. This standard covers specifications and performance requirements for 37° and 45° single and double flares for tube ends intended for use with SAE J512, SAE J513, SAE J514, and ISO 8434-2 connectors.

57. *TPI 1-2007*. National Design Standard for Metal Plate Connected Wood Truss Construction and 2007 Commentary and Appendices. This standard establishes minimum requirements for the design and construction of metal-plate-connected wood Trusses. This standard describes the materials used in a Truss, both lumber and steel, and design procedures for Truss members and joints:

a. ANSI/TPI 1-2007, National Design Standard for Metal Plate Connected Wood Truss Construction; and

b. TPI 1-2007 Commentary and Appendices.

58. *UL 103*. Standard for Safety Factory-Built for Residential Type and Building Heating Appliances. The rule updates UL 103. This standard sets forth the requirements for factory-built chimneys intended for venting gas, liquid, and solid-fuel fired residential-type appliances and building heating appliances in which the maximum continuous flue-gas outlet temperatures do not exceed 1,000 °F (538 °C).

59. *UL 109*. Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use. The rule updates UL 109. This standard sets forth the requirements that apply to the performance in flame-exposure tests of flame-resistant fabrics of natural, synthetic or combination of natural and synthetic fibers, or plastic films intended for such use as tents, awnings, draperies or decorations.

60. *UL 174*. Standard for Safety Household Electric Storage Tank Water Heaters. The rule updates UL 174. This standard sets forth the requirements for household electric storage tank and small capacity storage tank water heaters that are rated no more than 600 volts and 12 kilowatts and are to be installed in accordance with the NFPA 70 and with model plumbing and mechanical codes.

61. *UL 181*. Standard for Safety Factory Made Air Ducts and Connectors. The rule updates UL 181. This standard sets forth the requirements that apply to materials for the fabrication of air duct and air connector systems for use in accordance with the International Mechanical Code, International Residential Code, and Uniform Mechanical Code, Standards of the National Fire Protection Association for the Installation of Air-Conditioning and Ventilating Systems, NFPA 90A, and the Installation of Warm Air Heating and Air-Conditioning Systems, NFPA 90B.

62. *UL 181A*. Standard for Safety Closure Systems for Use with Rigid Air Ducts. The rule updates UL 181A. This

standard sets forth the requirements that cover closure systems for use with factory-made rigid air ducts or air connectors complying with the Standard for Factory-Made Air Ducts and Air Connectors, UL 181.

63. *UL 268*. Smoke Detectors for Fire Protective Signaling Systems. This rule updates UL 268. This standard sets forth requirements that cover smoke detectors intended to be employed in indoor locations in accordance with the National Fire Alarm Code, NFPA 72.

64. *UL 307A*. Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles. The rule updates UL 307A. This standard sets forth requirements that apply to certain types of liquid fuel-burning appliances intended for installation in manufactured homes and recreational vehicles, including travel trailers, camping trailers, truck campers, motor homes, and park trailers.

65. *UL 307B*. Gas-Burning Appliances for Manufactured Homes and Recreational Vehicles. The rule updates UL 307B. This standard sets forth the requirements that apply to the certain gas fuel-burning heating appliances.

66. *UL 441*. Gas Vents. The rule updates UL 441. This standard sets forth the requirements that cover Types B and BW gas vents and Types B and BW gas vent roof jacks intended for venting gas appliances equipped with draft hoods to burn only gas.

67. *UL 569*. Standard for Safety Pigtails and Flexible Hose Connectors for LP-Gas. The rule updates UL 569. This standard sets forth the requirements that cover pigtailed and flexible hose connectors used in the assembly of fuel-supply systems and intended for liquefied petroleum gas.

68. *UL 1042*. Standard for Safety Electric Baseboard Heating Equipment. The rule updates UL 1042. This standard sets forth the requirements for portable and fixed electric baseboard heating equipment rated at 600 volts or

less, to be employed in ordinary locations in accordance with NFPA 70.

69. *UL 2034*. Standard for Safety Single and Multiple Station Carbon Monoxide Alarms. This rule updates UL 2034. This standard sets forth the requirements for electrically operated single and multiple station carbon monoxide alarms intended for protection in ordinary indoor locations of dwelling units, including manufactured homes.

70. *WMDA I.S.4-2009*. Industry Specification for Preservative Treatment for Millwork. The rule updates NWWDA I.S.4. This specification provides a nationally recognized standard for the water-repellent preservative treatment for millwork and serves as a basis of common understanding for producers, preservative formulators, distributors and users. The standard is also intended to promote fair competition within the industry and to aid purchasers and users in obtaining properly treated millwork.

D. Summary of New and Updated Standards

The following is a list of the standards incorporated by reference that is being revised by this final rule. Each reference standard is preceded by an indicator to identify the type of change being made. A new reference standard being added is indicated by the designation “N” and a reference standard being updated is indicated by the designation “U.” Reference standards designated “*” are not new or being updated, but have already been codified into the MHCSS and are being added to a different section of the regulations than the currently codified regulations. The sections of the MHCSS being amended by each modification are also shown on the right of each reference standard being added or updated.

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
1	U	AAMA 1701.2	American Architectural Manufacturers Association.	Voluntary Standard for Utilization in Manufactured Housing for Primary Window and Sliding Glass Doors.	2012	(u)(3)	3280.403(b) and (e), 3280.404(b) and (e).
2	U	AAMA 1702.2	American Architectural Manufacturers Association.	Voluntary Standard for Utilization in Manufactured Housing for Swinging Exterior Passage Doors.	2012	(u)(4)	3280.403(e), 3280.405(b) and (e).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
3	U	AAMA 1704	American Architectural Manufacturers Association.	Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing.	2012	(u)(5)	3280.404(b) and (e).
4	U	AAMA/WDMA/CSA 101/I.S.2/A440.	American Architectural Manufacturers Association/Window and Door Manufacturers Association.	North American Fenestration Standard/Specification for Windows, Doors, and Skylights.	2017	(r)(1)	3280.304(b)(1), 3280.403(b) and (e), 3280.404(b) and (e), 3280.405(b) and (e).
5	U	AISC 360	American Institute of Steel Construction.	Specifications for Structural Steel Buildings.	2010	(f)(1)	3280.304(b)(2), 3280.305(j)(1).
6	U	AISI S100	American Iron and Steel Institute.	North American Specification for the Design of Cold-Formed Steel Structural Members.	2012	(g)(1)	3280.304(b)(2), 3280.305(j)(1).
7	U	ANSI/AHRI 210/240 with Addenda 1 and 2.	American National Standards Institute/Air Conditioning, Heating, & Refrigeration Institute.	Unitary Air-Conditioning and Air-Source Heat Pump Equipment.	2008	(b)(1)	3280.511(b), 3280.703(d)(22), 3280.714(a).
8	U	ANSI A135.4	American National Standards Institute.	Basic Hardboard	2012	(q)(1)	3280.304(b)(3).
9	U	ANSI A135.5	American National Standards Institute.	Prefinished Hardboard Paneling.	2012	(q)(2)	3280.304(b)(3).
10	U	ANSI A135.6	American National Standards Institute.	Hardboard Siding ...	2012	(q)(3)	3280.304(b)(3).
11	U	ANSI A208.1	American National Standards Institute.	Particleboard	2009	(q)(4)	3280.304(b)(3).
12	U	ANSI LC 1	American National Standards Institute.	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing.	2014	(r)(2)	3280.705(b)(5).
13	U	ANSI Z21.1	American National Standards Institute.	Household Cooking Gas Appliances.	2016	(r)(3)	3280.703(a)(13).
14	U	ANSI Z21.5.1	American National Standards Institute.	Gas Clothes Dryers Volume 1, Type 1 Clothes Dryers.	2015	(r)(4)	3280.703(a)(7).
15	U	ANSI Z21.10.1	American National Standards Institute.	Gas Water Heaters Volume 1, Storage Water Heaters with Input Ratings of 75,000 BTU per hour or less.	2014	(r)(5)	3280.703(a)(15), 3280.707(d)(2).
16	N	ANSI Z21.10.3	American National Standards Institute.	Gas-fired Water Heaters Volume 3, Storage Water Heaters with Input Ratings Above 75,000 BTU per Hour, Circulating and Instantaneous.	2014	(r)(6)	3280.703(a)(8).
17	U	ANSI Z21.15	American National Standards Institute.	Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves.	2009	(r)(7)	3280.703(c)(4), 3280.705(c) and (l).
18	U	ANSI Z21.19	American National Standards Institute.	Refrigerators Using Gas Fuel.	2014	(r)(8)	3280.703(a)(14).
19	U	ANSI Z21.20	American National Standards Institute.	Automatic Gas Ignitions Systems and Components.	2014	(r)(9)	3280.703(d)(9).
20	U	ANSI Z21.21	American National Standards Institute.	Automatic Valves for Gas Appliances.	2012	(r)(10)	3280.703(d)(10).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
21	U	ANSI Z21.23	American National Standards Institute.	Gas Appliance Thermostats, Tenth Edition.	2000	(r)(11)(i)	3280.703(d)(11).
22	U	ANSI Z21.23a	American National Standards Institute.	Addenda to the Tenth Edition of Gas Appliance Thermostats.	2003	(r)(11)(ii)	3280.703(d)(11).
23	U	ANSI Z21.23b	American National Standards Institute.	Addenda to the Tenth Edition of ANSI Z21.23–2000 and Addenda Z21.23a–2003.	2005	(r)(11)(iii)	3280.703(d)(11).
24	U	ANSI Z21.24	American National Standards Institute.	Connectors for Gas Appliances.	2006	(r)(12)	3280.703(c)(3).
25	U	ANSI Z21.47	American National Standards Institute.	Gas Fired Central Furnaces (Except Direct Vent Systems).	2012	(r)(14)	3280.703(a)(10).
26	N	ANSI Z21.75	American National Standards Institute.	Connectors for Outdoor Gas Appliances and Manufactured Homes.	2007	(r)(15)	3280.703(a)(11).
27	U	ANSI Z97.1	American National Standards Institute.	Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test.	2009	(h)(9)	3280.113(d), 3280.304(b)(6), 3280.405(d), 3280.607(b), 3280.703(d)(4).
28	U	APA D510C (replaces APA D410A).	The Engineered Wood Association (formerly the American Plywood Association).	Panel Design Specification.	2012	(m)(1)	3280.304(b)(3).
29	U	APA E30V	The Engineered Wood Association (formerly the American Plywood Association).	Engineered Wood Construction Guide.	2011	(m)(3)	3280.304(b)(3).
30	U	APA H815G	The Engineered Wood Association (formerly the American Plywood Association).	Design & Fabrication of All-Plywood Beams.	2013	(m)(4)	3280.304(b)(3).
31	U	APA S811P	The Engineered Wood Association (formerly the American Plywood Association).	Design & Fabrication of Plywood Curved Panels.	2013	(m)(5)	3280.304(b)(3).
32	U	APA S812S	The Engineered Wood Association (formerly the American Plywood Association).	Design & Fabrication of Glued Plywood Lumber Beams.	2013	(m)(6)	3280.304(b)(3).
33	U	APA U813M	The Engineered Wood Association (formerly the American Plywood Association).	Design & Fabrication of Plywood-Stressed Skin Panels.	2013	(m)(7)	3280.304(b)(3).
34	U	APA U814J	The Engineered Wood Association (formerly the American Plywood Association).	Design & Fabrication of Plywood Sandwich Panels.	2013	(m)(8)	3280.304(b)(3).
35	N	APA Y510	The Engineered Wood Association (formerly the American Plywood Association).	Plywood Design	1997	(m)(9)	3280.304(b)(3).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
36	U	ANSI/ASHRAE 62.2	American National Standards Institute/American Society of Heating, Refrigeration and Air Conditioning Engineers.	Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings.	2013	(j)(2)	3280.103(d) and (e), 3280.703(d)(23).
37	U	ANSI/ASME B1.20.1.	American National Standards Institute/American Society of Mechanical Engineers.	Pipe Threads, General Purpose (Inch).	2013	(k)(18)	3280.604(c)(1), 3280.703(b)(3), 3280.705(e), 3280.706(d).
38	U	ANSI/ASME B36.10	American Society of Mechanical Engineers.	Welding and Seamless Wrought Steel Pipe.	2004	(k)(26)	3280.604(c)(1), 3280.703(b)(4), 3280.705(b)(1), 3280.706(b)(1).
39	U	ASTM A53/A53M ...	ASTM, International	Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc Coated, Welded and Seamless.	2012	(n)(1)	3280.604(c)(1), 3280.703(b)(1).
40	U	ASTM B42	ASTM, International	Standard Specification for Seamless Copper Pipe, Standard Sizes.	2010	(n)(4)	3280.604(c)(2), 3280.703(c)(7).
41	U	ASTM B88	ASTM, International	Standard Specification for Seamless Copper Water Tube.	2014	(n)(6)	3280.604(c)(2), 3280.703(c)(1), 3280.705(b)(3), 3280.706(b)(3).
42	U	ASTM B251	ASTM, International	Standard Specification for General Requirements for Wrought Seamless Copper-Alloy Tubes.	2010	(n)(7)	3280.604(c)(2), 3280.703(c)(6).
43	U	ASTM B280	ASTM, International	Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service.	2013	(n)(8)	3280.703(c)(2), 3280.705(b)(3), 3280.706(b)(3).
44	U	ASTM C1396/C1396M.	ASTM, International	Standard Specification for Gypsum Board.	2014	(n)(12)	3280.304(b)(4)(i).
45	N	ASTM D3679	ASTM, International	Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Siding.	2009a	(n)(21)	3280.304(b)(6), 3280.309(b)(1).
46	U	ASTM D4442	ASTM, International	Standard Test Methods for Direct Moisture Content Measurement of Wood & Wood Base Materials.	2007	(n)(23)	3280.304(b)(3).
47	U	ASTM D4444	ASTM, International	Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters.	2013	(n)(24)	3280.304(b)(3).
48	N	ASTM D4756	ASTM, International	Standard Practice for Installation of Rigid Poly (Vinyl Chloride) (PVC) Siding and Soffit.	2006	(n)(26)	3280.304(b)(6), 3280.309(c).
49	N	ASTM D7254	ASTM, International	Standard Specification for Polypropylene (PP) Siding.	2007	(n)(28)	3280.304(b)(6), 3280.309(b)(2).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
50	N	ASTM E90	ASTM, International	Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements.	2009	(n)(30)	3280.115(b).
51	U	ASTM E96/E96M	ASTM, International	Standard Test Methods for Water Vapor Transmission of Materials.	2013	(n)(31)	3280.504(a) and (c).
52	U	ASTM E119	ASTM, International	Standard Test Method for Fire Tests of Building Construction and Materials.	2014	(n)(32)	3280.215(a) and (d)(1)(iii), 3280.304(b)(3)(xxvii), 3280.1003(a)(1).
53	N	ASTM E492	ASTM, International	Standard Test Method for Laboratory Measurement of Impact Sound Transmission Through Floor-Ceiling Assemblies Using the Tapping Machine.	2009	(n)(34)	3280.115(c).
54	N	ASTM E814	ASTM, International	Standard Test Method for Fire Tests of Penetration Firestop Systems.	2013	(n)(37)	3280.215(b)(1)(ii).
55	U	AWC Design Values for Joists and Rafters (formerly under AFPA).	American Wood Council (formerly American Forest & Paper Association).	Design Values for Joists and Rafters, 2012 Edition.	2012	(o)(3)	3280.304(b)(3).
56	U	AWC NDS (formerly under AFPA).	American Wood Council (formerly American Forest & Paper Association).	National Design Specifications for Wood Construction.	2015	(o)(1)(i)	3280.215(a), 3280.304(b)(3).
57	U	AWC NDS Supplement (formerly under AFPA).	American Wood Council (formerly American Forest & Paper Association).	NDS Supplement, Design for Wood Construction.	2015	(o)(1)(ii)	3280.215(a), 3280.304(b)(3).
58	U	AWC Span Tables for Joists and Rafters (formerly under AFPA).	American Wood Council (formerly American Forest & Paper Association).	Span Tables for Joists and Rafters, 2012 Edition.	2012	(o)(2)	3280.304(b)(3)(xix).
59	U	ANSI/HPVA HP-1	American National Standards Institute/Hardwood Plywood and Veneer Association (previously HPMA).	American National Standard for Hardwood and Decorative Plywood.	2009	(s)(1)	3280.304(b)(3)(iv).
60	U	IAPMO TS 9	Int'l Association of Plumbing and Mechanical Officials.	Standard for Gas Supply Connectors for Manufactured Homes.	2003	(x)(8)	3280.703(c)(5).
61	N	ISO/IEC 17065	Int'l Organization for Standardization/Int'l Electrotechnical Commission.	Conformity Assessment—Requirements for Bodies Certifying Products, Processes and Services.	2012	(z)(1)	3280.403(e)(1), 3280.404(e)(2), 3280.405(e)(1).
62	U	ESR 1539	International Code Council Evaluation Service (previously known as National Evaluation Service).	Power Driven Staples and Nails.	2014	(y)(1)	3280.304(b)(5)(i).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
63	N	NFPA 13D	National Fire Protection Association.	Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes.	2010	(dd)(1)	3280.214(b), (e)(2), and (o)(3)(i).
64	U	NFPA 31	National Fire Protection Association.	Installation of Oil-Burning Equipment.	2011	(dd)(2)	3280.703(d)(13), 3280.707(f).
65	U	NFPA 54/ANSI Z223.1.	National Fire Protection Association/American National Standards Institute.	National Fuel Gas Code.	2015	(dd)(3)	3280.703(d)(14).
66	U	NFPA 58	National Fire Protection Association.	Standard for the Storage and Handling of Liquefied Petroleum Gas.	2014	(dd)(4)	3280.703(d)(16).
67	U	NFPA 70	National Fire Protection Association/National Electric Code.	National Electric Code.	2014	(dd)(5)	3280.607(c), 3280.801(a) and (b), 3280.803(k), 3280.804(a) and (k), 3280.805(a), 3280.806(d), 3280.807(c), 3280.808(l) and (p), 3280.810(b), 3280.811(b).
68	U	NFPA 90B	National Fire Protection Association.	Warm Air Heating and Air Conditioning Systems.	2015	(dd)(6)	3280.703(d)(15).
69	U	SAE J533	Society of Automotive Engineers.	Flares for Tubing	2007	(hh)(1)	3280.703(d)(17), 3280.705(f)(1).
70	N	TT-P-1536A	Federal Specification.	Plumbing Fixture Setting Compound.	1975	(t)(3)	3280.604(b).
71	U	TPI 1 (replaces TPI-85).	Truss Plate Institute	National Design Standard for Metal Plate Connected Wood Truss Construction.	2007	(jj)(1)(i)	3280.304(b)(3)(ix).
72	U	TPI 1 Commentary and Appendices.	Truss Plate Institute	2007 Commentary and Appendices.	2007	(jj)(1)(ii)	3280.304(b)(3)(ix).
73	U	PS 1 Voluntary Product Standard.	National Institute of Standards and Technology.	Structural Plywood (with Typical APA Trademarks).	2009	(ee)(1)	3280.304(b)(3).
74	U	UL 103	Underwriters' Laboratories, Inc.	Chimneys, Factory Built Residential Type & Building Heating Appliance.	2010	(kk)(2)	3280.703(d)(18).
75	U	UL 109	Underwriters' Laboratories, Inc.	Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use.	2005	(kk)(3)	3280.703(d)(5).
76	U	UL 174	Underwriters' Laboratories, Inc.	Household Electric Storage Tanks Water Heaters.	2004	(kk)(5)	3280.703(a)(16).
77	U	UL 181	Underwriters' Laboratories, Inc.	Factory Made Air Ducts & Connectors.	2013	(kk)(6)	3280.702, 3280.703(d)(1), 3280.715(a) and (e).
78	U	UL 181A	Underwriters' Laboratories, Inc.	Closure Systems for Use with Rigid Air Ducts and Air Connectors.	2013	(kk)(7)	3280.703(d)(2), 3280.715(c).
79	N	UL 263	Underwriters' Laboratories, Inc.	Fire Tests of Building Construction Materials.	2014	(kk)(10)	3280.215(a) and (d)(1)(iii).
80	U	UL 268	Underwriters' Laboratories, Inc.	Smoke Detectors for Fire Protective Signaling Systems.	1999	(kk)(11)	3280.209(a), 3280.703(a)(1).

SUMMARY TABLE OF NEW AND UPDATED IBR STANDARDS UNDER § 3280.4—Continued
[4th/5th Set Final Rule]

Number	N/U	Standard	Publishing organization	Title	Year	3280.4	Impacted sections
81	U	UL 307A	Underwriters' Laboratories, Inc.	Liquid Fuel-Burning Heating Appliances for Manufactured Homes & Recreational Vehicles.	2009	(kk)(12)	3280.703(a)(2), 3280.707(f).
82	U	UL 307B	Underwriters' Laboratories, Inc.	Gas-Burning Appliances for Manufactured Homes & Recreational Vehicles.	2009	(kk)(13)	3280.703(a)(6).
83	U	UL 441	Underwriters' Laboratories, Inc.	Gas Vents	2010	(kk)(15)	3280.703(d)(12).
84	N	UL 499	Underwriters' Laboratories, Inc.	Standard for Electric Heating Appliances.	2014	(kk)(16)	3280.703(a)(19).
85	U	UL 569	Underwriters' Laboratories, Inc.	Pigtails & Flexible Hose Connectors for LP Gas.	2013	(kk)(17)	3280.703(d)(6), 3280.705(l)(1).
86	U	UL 1042	Underwriters' Laboratories, Inc.	Electric Baseboard Heating Equipment.	2009	(kk)(20)	3280.703(a)(4).
87	N	UL 1479	Underwriters' Laboratories, Inc.	Fire Tests of Penetration Firestops.	2014	(kk)(22)	3280.215(d)(1)(ii).
88	U	UL 2034	Underwriters' Laboratories, Inc.	Standard for Single and Multiple Station Carbon Monoxide Alarms, Fourth Edition.	2016	(kk)(25)	3280.209(a), 3280.211(a), 3280.703(a)(18).
89	N	UL 60335-2-40	Underwriters' Laboratories, Inc.	Standard for Household and Similar Electrical Appliances—Safety, Part 2-34: Particular Requirements for Motor-Compressors.	2012	(kk)(26)	3280.703(a)(16).
90	U	WDMA I.S.4	Window and Door Manufacturers Association.	Industry Specification for Preservative Treatment for Millwork.	2009	(mm)(1)	3280.405(c).

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order

14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866, among other things.

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule is a “significant regulatory action” as defined in section 3(f)(1) of the Order. Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection at either www.regulations.gov or in the Regulations Division, Office of the General Counsel, 451 7th Street SW, Washington, DC 20410-0500. HUD strongly encourages the public to view the docket file at www.regulations.gov. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free

number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. OMB has issued HUD the control number 2502-0253 for the information collection requirements under the current Manufactured

Housing Construction and Safety Standards Program.

This final rule revises the technical standards within the MHCSS that address the fourth and fifth sets of recommendations made to HUD by the MHCC. The revisions include a large number of updated standards incorporated by reference, which will bring the MHCSS in line with more current industry standards, improve the quality and safety of manufactured homes constructed, and allow for expanded, innovative opportunities to use of manufactured housing, such as multi-dwelling unit manufactured homes. The revisions will eliminate the need for manufacturers to obtain special approvals from HUD for some construction features and options, including tankless water heaters, home designs with peak flip roof assemblies, and accessible shower compartments. This will cause the Design Approval Primary Inspection Agencies (DAPIAs) to subsequently experience a reduction in requests to review AC submissions and issue fewer concurrence correspondences to OMHP.

The overall reporting and recordkeeping burden for collection number 2502–0253 addressed in this final rule is estimated as follows:

Number of respondents: 196.

Number of responses: 197,014.

Frequency of response: 1,005.

Average hours per response: 1.2.

Total estimated burden: 238,994.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or Tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable and is available for review in the docket for this rule on www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency to conduct a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The final rule regulates establishments primarily engaged in making manufactured homes (NAICS 321991). The Small Business Administration's size standards define an establishment primarily engaged in making manufactured homes as small if it does not exceed 1250 employees. 13 CFR 121.201. Of the 242 firms included under this NAICS definition, approximately 37 produce manufactured homes subject to the MHCSS. Of the 37 manufacturers subject to the MHCSS, 34 are considered small businesses based on the threshold of 1250 employees or less. The final rule would apply to all manufacturers. The rule would, thus, affect a substantial number of small entities.

HUD has determined, however, that this rule would not have a significant economic impact on a substantial number of small entities. As discussed in the economic impact analysis prepared for this rule, most of the revisions enacted by this rule would not affect costs of manufacturers, large or small, and provide benefit to homeowners. Furthermore, seven code changes enacted by this rule would affect the cost of design, production, or installation of manufactured homes by decreasing the costs of manufacturing.

This rule also eliminates the need for manufacturers to prepare and submit an Alternate Construction (AC) letter in four circumstances, providing all manufacturers, large and small, additional cost savings and increased flexibility in design. The changes provide additional options and increased flexibility in the four circumstances, which include design of accessible shower compartments, multi-dwelling unit manufactured homes, and revised floor plans. Savings from the reduced administrative burden associated with AC letter application and compliance is \$771,000 per production year.

Two revisions increase production costs. The change to 24 CFR 3280.307(f) requires that the exterior wall envelope of a manufactured home contain a water resistive barrier behind the exterior cladding, as well as have a means of draining water that enters the assembly. The water resistant barriers, which are common in large manufactured homes and less common in small manufactured homes, would increase the upfront production costs. Based on HUD's industry knowledge, small businesses

produce custom or larger manufactured homes and were much likelier to have incorporated water resistant barriers in their products prior to this rule. This means the costs of water resistive barriers have largely been incorporated into existing manufacturing costs for small businesses compared to large businesses.

There are no significant alternatives to the water resistive barrier standard. This is because no alternatives reduce the fire hazard risks in manufactured homes as effectively as this water resistant barrier standard while maintaining a similar cost structure. Further, no similar standards were considered by the MHCC, which includes numerous industry representatives and recommends incorporation of the standards, or recommended to HUD. This lack of recommendation divests HUD of authority to implement an alternative standard.

The rule also updates the AWC National Design Specification for Wood Construction reference from the 2001 to 2015 edition. This change, which amends the design values for the grade of wood needed for structural elements, was recommended by the MHCC after the Southern Pine Inspection Bureau (SPIB), an independent non-profit industry inspection agency, discovered that the strength of southern pine lumber had decreased and that previous standards were insufficient to protect against structural failure. The recommendations from the SPIB provide that the most effective method to avoid structural failure is changing the values. This led the manufactured housing industry, including small manufacturers, to implement the 2015 edition of this standard in their production process. Further, the MHCC did not consider an alternative or provide HUD with a recommendation and this rule codifies a standard that is broadly used in the industry.

Overall, the regulatory impact analysis for this rule concluded that the decreased costs of design, production and installation of manufactured homes would reduce burden and result in an overall positive economic impact on manufacturers and consumers. The regulatory impact analysis also provides that the rule would produce net benefits ranging from \$160.4 million to \$334.4 million per production year. HUD has considered the effects of changes between the proposed rule and this final rule and finds that the regulatory impact analysis has changed minimally.

HUD solicited comments from the public at the proposed rule stage on whether the rule would impose a significant economic impact on a

substantial number of small entities. HUD received no comments suggesting that it would impose a significant economic impact on a substantial number of small entities. A handful of comments asserted the final rule would impose increased burdens on manufacturers in general, but the comments did not assert or suggest the burdens were economically significant or disproportionately impacted small businesses.

Accordingly, the undersigned certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3285

Housing standards, Manufactured homes.

24 CFR Part 3286

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR parts 3280, 3282, 3285, and 3286 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 15 U.S.C. 2697, 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. Amend § 3280.2 by:

■ a. Revising the definition for “Certification label”;

■ b. Adding, in alphabetical order, the definition for “Dwelling”;

■ c. Revising the definition for “Dwelling unit”; and

■ d. Adding, in alphabetical order, the definitions for “Multipurpose fire sprinkler system”, “Stand-alone fire sprinkler system”, and “Water resistive barrier”.

The revisions and additions read as follows:

§ 3280. 2 Definitions.

* * * * *

Certification label means the approved form of certification by the manufacturer that, under § 3280.11, is permanently affixed to each transportable section of each manufactured home manufactured for sale in the United States.

Dwelling means any structure that contains one to a maximum of four dwelling units, designed to be permanently occupied for residential living purposes.

Dwelling unit means a single unit that provides complete independent living facilities for one or more persons, where the occupancy is primarily permanent in nature, including permanent provisions for separate living, sleeping, cooking, eating, and sanitation.

* * * * *

Multipurpose fire sprinkler system means a system that supplies domestic water to both plumbing fixtures and fire sprinklers.

* * * * *

Stand-alone fire sprinkler system means a system that is separate and independent from the water distribution system.

* * * * *

Water resistive barrier means a material behind the exterior wall covering that is intended to prevent liquid water that has penetrated behind the exterior covering from intruding further into the exterior wall assembly.

* * * * *

■ 3. Revise and republish § 3280.4 to read as follows:

§ 3280.4 Incorporation by reference.

(a)(1) Certain material is incorporated by reference in this part with the

approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Housing and Urban Development (Department) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Department and at the National Archives and Records Administration (NARA). Contact the Department at: Office of Manufactured Housing Programs, 451 Seventh Street SW, Washington, DC 20410; email mhs@hud.gov; (202) 402-2698. 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.

(2) The IBR material may be obtained from the sources in this paragraph (a)(2) or from one or more private resellers listed in this paragraph (a)(2). For material that is no longer commercially available, contact the Office of Manufactured Housing Programs (see paragraph (a)(1) of this section).

(i) Accuris Standards Store, phone: (800) 332-6077; website: <https://store.accuristech.com>.

(ii) American National Standards Institute (see paragraph (h) of this section).

(iii) EverySpec LLC, 710 Lake Louise Ct., Gibsonsia, PA 10544; website: <http://everyspec.com>. (Government and military standards only.)

(iv) GlobalSpec, 257 Fuller Road, Suite NFE 1100, Albany, NY 12203-3621; phone: (800) 261-2052; website: <https://standards.globalspec.com>.

(v) Nimonik Document Center, 401 Roland Way, Suite 224, Oakland, CA, 94624; phone (650)591-7600; email: info@document-center.com; website: www.document-center.com.

(b) Air Conditioning, Heating & Refrigeration Institute (AHRI), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201; telephone: 703-524-8800; fax: 703-528-3816; website: www.ahrinet.org.

(1) ANSI/AHRI Standard 210/240-2008 with Addenda 1 and 2, 2008 Standard for Performance Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment, ANSI-approved December 2012; IBR approved for §§ 3280.511(b); 3280.703(d); 3280.714(a).

(2) [Reserved]

(c) Aluminum Association (AA), 1525 Wilson Blvd., Suite 600, Arlington, VA 22209; telephone: 703-358-2960; fax:

703–358–3921; website:

www.aluminum.org.

(1) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1–A, Sixth Edition, October 1994; IBR approved for § 3280.304(b).

(2) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1–B, First Edition, October 1994; IBR approved for § 3280.304(b).

(d) American Forest and Paper Association (AFPA), 1101 K Street NW, Suite 700, Washington, DC 20005; telephone: 202–463–2700; website: www.afandpa.org.

(1) AFPA, Wood Structural Design Data, 1986 Edition with 1992 Revisions; IBR approved for § 3280.304(b).

(2) [Reserved]

(e) American Gas Association (AGA), 400 North Capitol Street NW, Washington, DC 20001; telephone: 202–824–7000; website: www.aga.org.

(1) AGA No. 3–87, Requirements for Gas Connectors for Connection of Fixed Appliances for Outdoor Installation, Park Trailers, and Manufactured (Mobile) Homes to the Gas Supply; IBR approved for § 3280.703(d).

(2) [Reserved]

(f) American Institute of Steel Construction (AISC), 130 East Randolph Street, Suite 2000, Chicago, IL 60601–6219; telephone: 312–670–2400; fax: 312–626–2402; website: www.aisc.org.

(1) ANSI/AISC 360–10, Specification for Structural Steel Buildings, Second Printing; February 2012 (AISC 360–10); IBR approved for §§ 3280.304(b); 3280.305(j).

(2) [Reserved]

(g) American Iron and Steel Institute (AISI), 25 Massachusetts Avenue NW, Suite 800, Washington, DC 20001; telephone: 202–452–7100; website: www.steel.org.

(1) AISI S100–12, North American Specification for the Design of Cold-Formed Steel Structural Members, 2012 Edition, 2nd Printing—June 2014, including AISI S100–12–E3 errata dated December 10, 2014; IBR approved for §§ 3280.304(b); 3280.305(j).

(2) [Reserved]

(h) American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10018; telephone: 212–642–4900; fax: 212–398–0023; website: www.ansi.org.

(1) ANSI A112.14.1–1975, Backflow Valves; IBR approved for § 3280.604(c).

(2) ANSI A112.19.5–1979, Trim for Water Closet, Bowls, Tanks, and Urinals; IBR approved for § 3280.604(c).

(3) ANSI/AITC A190.1–1992, For wood products—Structural Glued Laminated Timber; IBR approved for § 3280.304(b).

(4) ANSI A208.2–2002, Medium Density Fiberboard (MDF) For Interior Applications, approved May 13, 2002; IBR approved for § 3280.304(b).

(5) ANSI B16.18–1984, Cast Copper Alloy Solder-Joint Pressure Fittings; IBR approved for § 3280.604(c).

(6) ANSI C72.1–1972, section 4.3.1, Household Automatic Electric Storage Type Water Heaters; IBR approved for § 3280.707(d).

(7) ANSI Z21.22–1999, Relief Valves for Hot Water Supply Systems; IBR approved for §§ 3280.604(c); 3280.703(d).

(8) ANSI Z34.1–1993, Third-Party Certification Programs for Products, Processes, and Services; IBR approved for §§ 3280.403(e); 3280.405(e).

(9) ANSI Z97.1–2009, American National Standard for safety glazing materials used in buildings—safety performance specifications and methods of test, approved November 2009; IBR approved for §§ 3280.113(d); 3280.304(b); 3280.403(d); 3280.604(c); 3280.607(b); 3280.703(d).

(10) ANSI Z124.1–1987, Plastic Bathtub Units with Addendum Z124.1a–1990 and Z124.1b–1991; IBR approved for § 3280.604(c).

(11) ANSI Z124.2–1987, Plastic Shower Receptors and Shower Stalls with Addendum Z124.2a–1990; IBR approved for § 3280.604(c).

(12) ANSI Z124.3–1986, Plastic Lavatories with Addendum Z124.3a–1990; IBR approved for § 3280.604(c).

(13) ANSI Z124.4–1986, Plastic Water Closets, Bowls, and Tanks with Addenda Z124.4a–1990; IBR approved for § 3280.604(c).

(14) ANSI Z124.5–1997, Plastic Toilet (Water Closets) Seats; IBR approved for § 3280.604(c).

(15) ANSI Z124.7–1997, Prefabricated Plastic Spa Shells; IBR approved for § 3280.604(c).

(16) ANSI Z–124.9–1994, Plastic Urinal Fixtures; IBR approved for § 3280.604(c).

(i) American Society of Civil Engineers (ASCE), 1801 Alexander Bell Drive, Reston, VA 20191; telephone: 800–548–2723; website: www.asce.org.

(1) ANSI/ASCE 7–88, Minimum Design Loads for Buildings and Other Structures, IBR approved for §§ 3280.5(f); 3280.304(b); 3280.305(c).

(2) SEI/ASCE 8–02, Specification for the Design of Cold-Formed Stainless Steel Structural Members, 2002; IBR approved for §§ 3280.304(b); 3280.305(j).

(3) ASCE 19–96, Structural Applications of Steel Cables for Buildings; IBR approved for § 3280.304(b).

(j) American Society of Heating, Refrigeration and Air Conditioning

Engineers (ASHRAE), 1791 Tullie Circle NE, Atlanta, GA 30329; telephone: 404–636–8400; fax: 404–321–5478; website: www.ashrae.org/home/.

(1) 1997 ASHRAE Handbook of Fundamentals, chapters 22 through 27, (except for the following parts of this standard that are not incorporated by reference: 23.1 Steel Frame Construction; 23.2 Masonry Construction; 23.3 Foundations and Floor Systems; 23.15 Pipes; 23.17 Tanks, Vessels, and Equipment; 23.18 Refrigerated Rooms and Buildings; 24.18 Mechanical and Industrial Systems; 25.19 Commercial Building Envelope Leakage; 27.9 Calculation of Heat Loss from Crawl Spaces), Inch-Pound Edition, 1997; IBR approved for §§ 3280.508(a) and (e); 3280.511(a).

(2) ANSI/ASHRAE Standard 62.2–2013, Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings, approved January 30, 2013 (ANSI/ASHRAE 62.2); IBR approved for §§ 3280.103(d) and (e); 3280.703(d).

(k) American Society of Mechanical Engineers (ASME), Two Park Avenue, New York, NY 10016–5990; telephone: 800–843–2763; website: www.asme.org/.

(1) ASME A112.1.2–1991, Air Gaps in Plumbing Systems; IBR approved for § 3280.604(c).

(2) ANSI/ASME A112.4.1–1993, Water Heater Relief Valve Drain Tubes; IBR approved for § 3280.604(c).

(3) ANSI/ASME A112.4.3–1999, Plastic Fittings for Connecting Water Closets to the Sanitary Drainage System; IBR approved for § 3280.604(c).

(4) ASME/ANSI A112.18.1M–1989, Plumbing Fixture Fittings; IBR approved for § 3280.604(c).

(5) ASME A112.18.3M–1996, Performance Requirements for Backflow Protection Devices and Systems in Plumbing Fixture Fittings; IBR approved for § 3280.604(c).

(6) ASME A112.18.6–1999, Flexible Water Connectors; IBR approved for § 3280.604(c).

(7) ASME A112.18.7–1999, Deck Mounted Bath/Shower Transfer Valves with Integral Backflow Protection; IBR approved for § 3280.604(c).

(8) ANSI/ASME A112.19.1M–1987, Enameled Cast Iron Plumbing Fixtures; IBR approved for § 3280.604(c).

(9) ANSI/ASME A112.19.2(M)–1990, Vitreous China Plumbing Fixtures; IBR approved for § 3280.604(c).

(10) ANSI/ASME A112.19.3M–1987, Stainless Steel Plumbing Fixtures (Designed for Residential Use); IBR approved for § 3280.604(c).

(11) ANSI/ASME A112.19.4(M)–1984, Porcelain Enameled Formed Steel

Plumbing Fixtures; IBR approved for § 3280.604(c).

(12) ASME A112.19.6–1995, Hydraulic Performance Requirements for Water Closets and Urinals; IBR approved for § 3280.604(c).

(13) ASME/ANSI A112.19.7M–1987, Whirlpool Bathtub Appliances; IBR approved for § 3280.604(c).

(14) ASME/ANSI A112.19.8M–1989, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances; IBR approved for § 3280.604(c).

(15) ASME A112.19.9M–1991, Non-Vitreous Ceramic Plumbing Fixtures; IBR approved for § 3280.604(c).

(16) ASME A112.19.10–1994, Dual Flush Devices for Water Closets; IBR approved for § 3280.604(c).

(17) ANSI/ASME A112.21.3M–1985, Hydrants for Utility and Maintenance Use; IBR approved for § 3280.604(c).

(18) ANSI/ASME B1.20.1–2013, Pipe Threads, General Purpose (Inch), reaffirmed 2018; IBR approved for §§ 3280.604(c); 3280.703(b); 3280.705(e); 3280.706(d).

(19) ANSI/ASME B16.3–1992, Malleable Iron Threaded Fittings; IBR approved for § 3280.604(c).

(20) ANSI/ASME B16.4–1992, Gray Iron Threaded Fittings; IBR approved for § 3280.604(c).

(21) ANSI/ASME B16.15–1985, Cast Bronze Threaded Fittings, Classes 125 and 250; IBR approved for § 3280.604(c).

(22) ASME/ANSI B16.22–1989, Wrought-Copper and Copper Alloy Solder-Joint Pressure Fitting; IBR approved for § 3280.604(c).

(23) ASME B16.23–1992, Cast Copper Alloy Solder-Joint Drainage Fittings-DWV; IBR approved for § 3280.604(c).

(24) ASME/ANSI B16.26–1988, Cast Copper Alloy Fittings for Flared Copper Tubes; IBR approved for § 3280.604(c).

(25) ASME/ANSI B16.29–1986, Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings-DWV; IBR approved for § 3280.604(c).

(26) ANSI/ASME B36.10–2004, Welded and Seamless Wrought Steel Pipe, ANSI-approved June 23, 2004; IBR approved for §§ 3280.604(c); 3280.703(b); 3280.705(b); 3280.706(b).

(l) American Society of Sanitary Engineering (ASSE), 901 Canterbury, Suite A, Westlake, OH 44145; telephone: 440–835–3040; fax: 440–835–3488; website: www.asse-plumbing.org.

(1) ASSE 1001, Performance Requirements for Pipe Applied Atmospheric Type Vacuum Breakers, ANSI-approved 1990; IBR approved for § 3280.604(c).

(2) ASSE 1002 (ANSI/ASSE–1979), Performance Requirements for Water

Closet Flush Tank Fill Valves (Ballcocks), Revision 5, 1986; IBR approved for § 3280.604(c).

(3) ASSE 1006, Plumbing Requirements for Residential Use (Household) Dishwashers, ASSE/ANSI–1986; IBR approved for § 3280.604(c).

(4) ASSE 1007–1986, Performance Requirements for Home Laundry Equipment; IBR approved for § 3280.604(c).

(5) ASSE 1008–1986, Performance Requirements for Household Food Waste Disposer Units; IBR approved for § 3280.604(c).

(6) ASSE 1011–1981, Performance Requirements for Hose Connection Vacuum Breakers, ANSI-approved 1982; IBR approved for § 3280.604(c).

(7) ASSE 1014–1989, Performance Requirements for Hand-held Showers, ANSI-approved 1990; IBR approved for § 3280.604(c).

(8) ASSE 1016–2005, Performance Requirements for Automatic Compensating Valves for Individual Shower and Tub/Shower Combinations, approved January 2005; IBR approved for §§ 3280.604(c); 3280.607(b).

(9) ASSE 1017–1986, Performance Requirements for Temperature Activated Mixing Valves for Primary Domestic Use, 1986; IBR approved for § 3280.604(c).

(10) ANSI/ASSE 1019–1978, Performance Requirements for Wall Hydrants, Frost Proof Automatic Draining, Anti-Backflow Types, 1978; IBR approved for § 3280.604(c).

(11) ASSE 1023, Performance Requirements for Hot Water Dispensers, Household Storage Type Electrical, ANSI/ASSE–1979; IBR approved for § 3280.604(c).

(12) ASSE 1025, Performance Requirements for Diverters for Plumbing Faucets with Hose Spray, Anti-Siphon Type, Residential Applications, ANSI/ASSE–1978; IBR approved for § 3280.604(c).

(13) ASSE 1037–1990, Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures, ANSI-approved 1990; IBR approved for § 3280.604(c).

(14) ASSE 1051, Performance Requirements for Air Admittance Valves for Plumbing Drainage Systems—Fixture and Branch Devices Revised 1996, ANSI-approved 1998; IBR approved for § 3280.604(c).

(15) ASSE 1070–2004, Performance Requirements for Water Temperature Limiting Devices, 2004; IBR approved for §§ 3280.604(c); 3280.607(b).

(m) APA—The Engineered Wood Association (APA) (formerly the American Plywood Association), 7011 South 19th Street, Tacoma, WA 98411;

telephone: 253–565–6600; fax: 253–565–7265; website: www.apawood.org.

(1) APA D510C, Panel Design Specification, copyright 2012; IBR approved for § 3280.304(b).

(2) APA E30P–1996, APA Design/Construction Guide, Residential and Commercial Structures; IBR approved for § 3280.304(b).

(3) APA E30V, Engineered Wood Construction Guide, copyright 2011; IBR approved for § 3280.304(b).

(4) APA H815G, Plywood Design Specification Supplement 5–12, Design and Fabrication of All-Plywood Beams, December 2013; IBR approved for § 3280.304(b).

(5) APA S811P, Plywood Design Specification Supplement 1–12, Design and Fabrication of Plywood Curved Panels, December 2013; IBR approved for § 3280.304(b).

(6) APA S812S, Plywood Design Specification Supplement 2–12, Design and Fabrication of Glued Plywood-Lumber Beams, December 2013; IBR approved for § 3280.304(b).

(7) APA U813M, Plywood Design Specification Supplement 3–12, Design and Fabrication of Plywood Stressed-Skin Panels, December 2013; IBR approved for § 3280.304(b).

(8) APA U814J, Plywood Design Specification Supplement 4–12, Design and Fabrication of Plywood Sandwiched Panels, December 2013; IBR approved for § 3280.304(b).

(9) APA Y510, Plywood Design, January 1997; IBR approved for § 3280.304(b).

(n) ASTM, International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; telephone: 877–909–2786 (USA & Canada); fax: 610–832–9555; website: www.astm.org.

(1) ASTM A53/A53M–12, Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless, approved March 1, 2012; IBR approved for §§ 3280.604(c); 3280.703(b).

(2) ASTM A74–92, Standard Specification for Cast Iron Soil Pipe and Fittings, 1992; IBR approved for § 3280.604(c).

(3) ASTM A539–99, Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines, 1999; IBR approved for §§ 3280.703(b); 3280.705(b); 3280.706(b).

(4) ASTM B42–10, Standard Specification for Seamless Copper Pipe, Standard Sizes, approved October 1, 2010; IBR approved for §§ 3280.604(c); 3280.703(c).

(5) ASTM B43–91, Standard Specification for Seamless Red Brass Pipe, Standard Sizes, 1991; IBR

approved for §§ 3280.604(c); 3280.705(b).

(6) ASTM B88–14, Standard Specification for Seamless Copper Water Tube, approved September 1, 2014; IBR approved for §§ 3280.604(c); 3280.703(c); 3280.705(b); 3280.706(b).

(7) ASTM B251–10, Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube, approved October 1, 2010; IBR approved for §§ 3280.604(c); 3280.703(c).

(8) ASTM B280–13, Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service, approved April 1, 2013; IBR approved for §§ 3280.703(c); 3280.705(b); 3280.706(b).

(9) ASTM B306–92, Standard Specification for Copper Drainage Tube (DWV), 1992; IBR approved for § 3280.604(c).

(10) ASTM C564–97, Standard Specification for Rubber Gaskets for Case Iron Soil Pipe and Fittings, approved December 10, 1997; IBR approved for §§ 3280.604(c); 3280.611(d).

(11) ASTM C920–02, Standard Specification for Elastomeric Joint Sealants, approved January 10, 2002; IBR approved for § 3280.611(d).

(12) ASTM C1396/C1396M–14a, Standard Specification for Gypsum Board, approved October 1, 2014; IBR approved for § 3280.304(b).

(13) ASTM D781–68 (Reapproved 1973), Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard, 1973; IBR approved for §§ 3280.304(b); 3280.305(g).

(14) ASTM D2235–88, Standard Specification for Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings, 1988; IBR approved for § 3280.604(c).

(15) ASTM D2564–91a, Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems, 1991; IBR approved for § 3280.604(c).

(16) ASTM D2661–91, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe and Fittings, 1991; IBR approved for § 3280.604(c).

(17) ASTM D2665–91b, Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings, 1991; IBR approved for § 3280.604(c).

(18) ASTM D2846–92, Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot- and Cold-Water Distribution Systems, 1992; IBR approved for § 3280.604(c).

(19) ASTM D3309–92a, Standard Specification for Polybutylene (PB) Plastic Hot- and Cold-Water Distribution Systems, 1992; IBR approved for § 3280.604(c).

(20) ASTM D3311–92, Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fittings Patterns, 1992; IBR approved for § 3280.604(c).

(21) ASTM D3679–09a, Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Siding, approved November 1, 2009; IBR approved for §§ 3280.304(b); 3280.309(b).

(22) ASTM D3953–97, Standard Specification for Strapping, Flat Steel, and Seals, approved April 10, 1997; IBR approved for §§ 3280.304(b); 3280.306(g).

(23) ASTM D4442–07, Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials, approved November 15, 2007; IBR approved for § 3280.304(b).

(24) ASTM D4444–13, Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters, approved April 1, 2013; IBR approved for § 3280.304(b).

(25) ASTM D4635–01, Standard Specification for Polyethylene Films Made from Low-Density Polyethylene for General Use and Packaging Applications, approved June 10, 2001; IBR approved for § 3280.611(d).

(26) ASTM D4756–06, Standard Practice for Installation of Rigid Poly(Vinyl Chloride) (PVC) Siding and Soffit, approved April 1, 2006; IBR approved for §§ 3280.304(b); 3280.309(c).

(27) ASTM D6007–14, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small Air Chamber, approved October 1, 2014; IBR approved for § 3280.406(b).

(28) ASTM D7254–07, Standard Specification for Polypropylene (PP) Siding, January 1, 2007; IBR approved for §§ 3280.304(b); 3280.309(c).

(29) ASTM E84–01, Standard Test Method for Surface Burning Characteristics of Building Materials, 2001; IBR approved for § 3280.203(a).

(30) ASTM E90–09, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements, approved July 1, 2009; IBR approved for § 3280.115(b).

(31) ASTM E96/E96M–13, Standard Test Methods for Water Vapor Transmission of Materials, approved November 1, 2013; IBR approved for § 3280.504(a) and (c).

(32) ASTM E119–14, Standard Test Methods for Fire Tests of Building Construction and Materials, approved

October 1, 2014; IBR approved for §§ 3280.215(a) and (d); 3280.304(b); 3280.1003(a).

(33) ASTM E162–94, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source, 1994; IBR approved for § 3280.203(a).

(34) ASTM E492–09, Standard Test Method for Laboratory Measurement of Impact Sound Transmission Through Floor-Ceiling Assemblies Using the Tapping Machine, approved April 1, 2009; IBR approved for § 3280.115(b).

(35) ASTM E773–97, Standard Test Methods for Accelerated Weathering of Sealed Insulating Glass Units, 1997; IBR approved for § 3280.403(d).

(36) ASTM E774–97, Standard Specification for the Classification of the Durability of Sealed Insulating Glass Units, 1997; IBR approved for § 3280.403(d).

(37) ASTM E814–13, Standard Test Method for Fire Tests of Penetration Firestop Systems, approved November 1, 2013; IBR approved for § 3280.215(d).

(38) ASTM E1333–14, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Air Chamber, approved October 1, 2014; IBR approved for § 3280.406(b).

(39) ASTM F628–91, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40, Plastic Drain, Waste, and Vent Pipe with a Cellular Core, 1991; IBR approved for § 3280.604(c).

(40) ASTM F876–10, Standard Specification for Crosslinked Polyethylene (PEX) Tubing, approved February 10, 2010; IBR approved for § 3280.604(c).

(41) ASTM F877–07, Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems, approved February 1, 2007; IBR approved for § 3280.604(c).

(o) American Wood Council (AWC), 222 Catocin Circle SE, Suite 201, Leesburg, VA 20175; telephone: 202–463–2766; website: www.awc.org.

(1) AWC NDS–2015, National Design Specifications for Wood Construction with Supplement; IBR approved for §§ 3280.215(a); 3280.304(b);

(i) ANSI/AWC NDS–2015, 2015 Edition, ANSI-approved September 30, 2014; and

(ii) NDS Supplement, Design Values for Wood Construction, 2015 Edition, November 2014.

(2) Span Tables for Joists and Rafters: American Softwood Lumber Standard (PS 20–10) Sizes, 2012 Edition (AWC–2012—Span Tables for Joists and Rafters); IBR approved for § 3280.304(b).

(3) Design Values for Joists and Rafters, Supplement to Span Tables for Joists and Rafters (2012 Edition), March 2013 (AWC–2012 Design Values for Joists and Rafters); IBR approved for § 3280.304(b).

(p) Cast Iron Soil Pipe Institute (CISPI), 1064 Delaware Avenue SE, Atlanta, GA 30316; telephone: 404–622–0073; fax: 404–973–2845; website: www.cispi.org/.

(1) CISPI–301–90, Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications; IBR approved for § 3280.604(c).

(2) CISPI–HSN–85, Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings; IBR approved for §§ 3280.604(c), 3280.611(d).

(q) Composite Panel Association (formerly the American Hardboard Association), 19465 Deerfield Ave, Suite 306, Leesburg, VA 20176; telephone: 703–724–1128; website: compositepanel.org.

(1) ANSI A135.4–2012, Basic Hardboard, approved June 8, 2012; IBR approved for § 3280.304(b).

(2) ANSI A135.5–2012, Prefinished Hardboard Paneling, approved March 29, 2012; IBR approved for § 3280.304(b).

(3) ANSI A135.6–2012 (R2020), Engineered Wood Siding, Reaffirmation approved March 13, 2020; IBR approved for § 3280.304(b).

(4) ANSI A208.1–2009, Particleboard, approved February 2, 2009; IBR approved for § 3280.304(b).

(r) CSA Group, formerly known as the Canadian Standards Association (CSA), 178 Rexdale Boulevard, Toronto, ON, M9W 1R3, Canada; telephone: 216–524–4990; website: www.csagroup.org.

(1) AAMA/WDMA/CSA 101/I.S.2/A440–17, North American Fenestration Standard/Specification for Windows, Doors, and Skylights, revised September 2018; IBR approved for §§ 3280.304(b); 3280.403(b) and (e); 3280.404(b) and (e); 3280.405(b) and (e).

(2) ANSI LC 1–2014/CSA 6.26–2014, Fuel gas piping systems using corrugated stainless steel tubing, Published March 2014 (ANSI LC 1); IBR approved for § 3280.705(b).

(3) ANSI Z21.1–2016/CSA 1.1–2016, household cooking gas appliances, Published February 2016 (ANSI Z21.1); IBR approved for § 3280.703(a).

(4) ANSI Z21.5.1–2015/CSA 7.1–2015, gas clothes dryers, volume I, type 1 clothes dryers, Published January 2015 (ANSI Z21.5.1); IBR approved for § 3280.703(a).

(5) ANSI Z21.10.1–2014/CSA 4.1–2014, Gas water heaters, volume I, storage water heaters with input ratings of 75,000 BTU per hour or less, Published November 2014 (ANSI Z21.10.1); IBR approved for §§ 3280.703(a); 3280.707(d).

(6) ANSI Z21.10.3–2014/CSA 4.3–2014, Gas-fired water heaters, volume III, storage water heaters with input ratings above 75,000 BTU per hour, circulating and instantaneous, Published August 2014 (ANSI Z21.10.3); IBR approved for § 3280.703(a).

(7) ANSI Z21.15–2009 (reaffirmed 2019)/CSA 9.1–2009 (reaffirmed 2019), American National Standard/CSA Standard for Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves, Second Edition—2009, Published July 2009 (ANSI Z21.15); IBR approved for §§ 3280.703(c); 3280.705(c) and (l).

(8) ANSI Z21.19–2014/CSA 1.4–2014, Refrigerators using gas fuel, Published May 2014 (ANSI Z21.19); IBR approved for § 3280.703(a).

(9) ANSI Z21.20–2014 (reaffirmed 2019)/CAN/CSA C22.2 No.60730–2–5–14 (reaffirmed 2019), Automatic electrical controls for household and similar use—Part 2–5: Particular requirements for automatic electrical burner control systems, Reprinted September 30, 2019 (ANSI Z21.20); IBR approved for § 3280.703(d).

(10) ANSI Z21.21–2012/CSA 6.5–2012, Automatic valves for gas appliances, Fourth Edition—2012, Published November 2012 (ANSI Z21.21); IBR approved for § 3280.703(d).

(11) ANSI Z21.23, Gas Appliance Thermostats and addenda; IBR approved for § 3280.703(d):

(i) ANSI Z21.23–2000, Tenth Edition—2000, ANSI-approved September 27, 2000;

(ii) ANSI Z21.23a–2003, Addenda to the Tenth Edition of Gas Appliance Thermostats, ANSI-approved September 17, 2003; and

(iii) ANSI Z21.23b–2005, Addenda to the Tenth Edition of ANSI Z21.23–2000 and Addenda Z21.23a–2003: Gas Appliance Thermostats, ANSI-approved March 9, 2005.

(12) ANSI Z21.24–2006/CSA 6.10–2006 (reaffirmed 2011), Connectors for Gas Appliances, Third Edition—2006, Published February 2007 (ANSI Z21.24); IBR approved for § 3280.703(c).

(13) ANSI Z21.40.1–1996/CGA 2.91–M96, Gas-Fired, Heat Activated Air Conditioning and Heat Pump Appliances; IBR approved for §§ 3280.703(a); 3280.714(a).

(14) ANSI Z21.47–2012/CSA 2.3–2012, Gas-fired central furnaces, Sixth Edition—2012, ANSI-approved March

27, 2012 (ANSI Z21.47); IBR approved for § 3280.703(a).

(15) ANSI Z21.75–2007/CSA 6.27–2007 (reaffirmed 2012), Connectors for Outdoor Gas Appliances And Manufactured Homes, Second Edition, Published 2007 (ANSI Z21.75); IBR approved for § 3280.703(a).

(s) Decorative Hardwoods Association (formerly HPVA), 42777 Trade West Drive, Sterling, VA 20166; telephone: 703–435–2900; fax: 703–435–2537; website: www.decorativehardwoods.org.

(1) ANSI/HPVA HP–1–2009, American National Standard for Hardwood and Decorative Plywood, approved January 26, 2010; IBR approved for § 3280.304(b).

(2) HP–SG–96, Structural Design Guide for Hardwood Plywood Wall Panels, revised 1996; IBR approved for § 3280.304(b).

(t) FS—Federal Specifications, General Services Administration, Specifications Branch, Room 6039, GSA Building, 7th and D Streets SW, Washington, DC 20407.

(1) FS WW–P–541E/GEN–1980, Plumbing Fixtures (General Specifications); IBR approved for § 3280.604(c).

(2) FS ZZ–R–765B–1970, Silicone Rubber, (with 1971 Amendment); IBR approved for § 3280.611(d).

(3) TT–P–1536A, Plumbing Fixture Setting Compound, July 8, 1975; IBR approved for § 3280.604(b).

(u) Fenestration and Glazing Industry Alliance (FGIA) (formerly known as American Architectural Manufacturers Association (AAMA)), 1900 E Golf Road, Schaumburg, Illinois 60173; website: www.fgiaonline.org.

(1) AAMA 1503.1–88, Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors, and Glazed Wall Sections; IBR approved for § 3280.508(e).

(2) AAMA 1600/I.S.7–00, Voluntary Specification for Skylights, 2003; IBR approved for § 3280.305(c).

(3) AAMA 1701.2–12, Voluntary Standard for Utilization in Manufactured Housing for Primary Windows and Sliding Glass Doors, published November 2012; IBR approved for §§ 3280.403(b) and (e); 3280.404(b) and (e).

(4) AAMA 1702.2–12, Voluntary Standard for Utilization in Manufactured Housing for Swinging Exterior Passage Doors, published November 2012, including errata dated February 16, 2015 and March 29, 2017; IBR approved for §§ 3280.403(e); 3280.405(b) and (e).

(5) AAMA 1704–12, Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing,

published November 2012; IBR approved for § 3280.404(b) and (e).
 (v) HUD User, 11491 Sunset Hills Road, Reston, VA 20190-5254; telephone: 800-245-2691; website: www.huduser.gov.

(1) HUD User No. 0005945, Overall U-values and Heating/Cooling Loads—Manufactured Homes, February 1992; IBR approved for § 3280.508(b).

(2) [Reserved]

(w) IIT Research Institute (IITRI), 10 West 35th Street, Chicago, IL 60616; telephone: 312-567-4000; website: www.iitri.org/.

(1) IITRI Fire and Safety Research Project J-6461 “Development of Mobile Home Fire Test Methods to Judge the Fire-Safe Performance of Foam Plastic Sheathing and Cavity Insulation”, 1979; IBR approved for § 3280.207(a).

(2) [Reserved]

(x) International Association of Plumbing and Mechanical Officials (IAPMO), 4755 East Philadelphia Street, Ontario, CA 91716; telephone: 909-472-4100; fax: 909-472-4150; website: www.iapmo.org.

(1) IAPMO PS 2-89, Material and Property Standard for Cast Brass and Tubing P-Traps. 1989; IBR approved for § 3280.604(c).

(2) IAPMO PS 4-90, Material and Property Standard for Drains for Prefabricated and Precast Showers, 1990; IBR approved for § 3280.604(c).

(3) IAPMO PS 5-84, Material and Property Standard for Special Cast Iron Fittings, 1984; IBR approved for § 3280.604(c).

(4) IAPMO PS 9-84, Material and Property Standard for Diversion Tees and Twin Waste Elbow, 1984; IBR approved for § 3280.604(c).

(5) IAPMO PS 14-89, Material and Property Standard for Flexible Metallic Water Connectors, 1989; IBR approved for § 3280.604(c).

(6) IAPMO PS 23-89, Material and Property Standard for Dishwasher Drain Airgaps, 1989; IBR approved for § 3280.604(c).

(7) IAPMO PS 31-91, Material and Property Standards for Backflow Prevention Assemblies, 1989; IBR approved for § 3280.604(c).

(8) IAPMO TS 9-2003, Standard for Gas Supply Connectors for Manufactured Homes, revised 2003; IBR approved for § 3280.703(c).

(9) IAPMO TSC 22-85, Standard for Porcelain Enameled Formed Steel Plumbing Fixtures; IBR approved for § 3280.604(c).

(y) International Code Council Evaluation Service (ICC-ES), 3060 Saturn Street, Suite 100, Brea, CA 92821; telephone: 800-423-6587; fax: 562-695-4694; website: www.icc-es.org.

(1) ESR 1539, ICC-ES Evaluation Report; Power Driven Staples and Nails, reissued June 2014; IBR approved for § 3280.304(b).

(2) [Reserved]

(z) International Organization for Standardization, Chemin de Blandonnet 8, CP 401—1214 Vernier, Geneva, Switzerland; telephone: +41 22 749 01 11; website: www.iso.org.

(1) ISO/IEC 17065:2012(E) Conformity assessment—requirements for bodies certifying products, processes and services, approved September 15, 2012; IBR approved for §§ 3280.403(e); 3280.404(e); 3280.405(e).

(2) [Reserved]

(aa) Military Specifications and Standards, Naval Publications and Forms Center (MIL), 5801 Tabor Avenue, Philadelphia, PA 19120; website: www.dsp.dla.mil/.

(1) MIL-L-10547E-1975, Liners, Case, and Sheet, Overwrap; Water-Vapor Proof or Waterproof, Flexible, 1975; IBR approved for § 3280.611(d).

(2) [Reserved]

(bb) National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, Suite 1752, Arlington, VA 22209; telephone: 703-841-3200; fax: 703-841-5900; website: www.nema.org/Pages/default.aspx.

(1) ANSI/NEMA WD-6-1997 Wiring Devices-Dimensional Specifications, 1997; IBR approved for § 3280.803(f).

(2) [Reserved]

(cc) National Fenestration Rating Council (NFRC), 6305 Ivy Lane, Suite 140, Greenbelt, MD 20770; telephone: 301-589-1776; fax: 301-589-3884; website: www.nfrc.org.

(1) NFRC 100, Procedure for Determining Fenestration Product U-factors, 1997 Edition, 1997; IBR approved for § 3280.508(e).

(2) [Reserved]

(dd) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269; telephone: 617-770-3000; fax: 617-770-0700; website: www.nfpa.org.

(1) NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, 2010 Edition, approved August 26, 2009; IBR approved for § 3280.214(b), (e) and (o).

(2) NFPA 31, Standard for the Installation of Oil-Burning Equipment, 2011 Edition, approved January 3, 2011; IBR approved for §§ 3280.703(d); 3280.707(f).

(3) NFPA 54/ANSI Z223.1, National Fuel Gas Code, 2015 Edition, approved September 3, 2014; IBR approved for § 3280.703(d).

(4) NFPA 58, Liquefied Petroleum Gas Code, 2014 Edition, approved August 1, 2013; IBR approved for § 3280.703(d).

(5) NFPA 70, National Electrical Code, 2014 Edition, approved August 21, 2013; IBR approved for §§ 3280.607(c); 3280.801(b); 3280.803(k); 3280.804(a) and (k); 3280.805(a); 3280.806(a) and (d); 3280.807(c); 3280.808(a), (l), and (p); 3280.810(b); 3280.811(b).

(6) NFPA 90B, Standard for the Installation of Warm Air Heating and Air-Conditioning Systems, 2015 Edition, approved May 19, 2015; IBR approved for § 3280.703(d).

(7) NFPA 220, Standard on Types of Building Construction, Chapter 2: definitions of “limited combustible” and “noncombustible material”, 1995 Edition; IBR approved for § 3280.202.

(8) NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, 2000; IBR approved for § 3280.207(c).

(9) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996; IBR approved for §§ 3280.203(a); 3280.207(a).

(10) NFPA 720, Standard for Installation of Carbon Monoxide Detection (CO) Detection and Warning Equipment, 2015 Edition, Copyright 2014; IBR approved for § 3280.211(b).

(ee) U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Office of Engineering Standards, Room A-166, Technical Building, Washington, DC 20234 and Voluntary Product Division, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899-2100; telephone: 301-975-4000; fax: 301-975-4715; website: www.nist.gov.

(1) Voluntary Product Standard PS 1-09, Structural Plywood (With Typical APA Trademarks), effective May 1, 2009 (NIST PS 1); IBR approved for § 3280.304(b).

(2) Voluntary Product Standard PS 2-04, Performance Standard for Wood-Based Structural-Use Panels, December 2004 (NIST PS 2); IBR approval for § 3280.304(b).

(ff) National Sanitation Foundation (NSF), 789 North Dixboro Road, Ann Arbor, MI 48105; telephone: 734-769-8010 fax: 734-769-0109; website: www.nsf.org.

(1) ANSI/NSF 14-1990, Plastic Piping Components and Related Materials; IBR approved for § 3280.604(c).

(2) ANSI/NSF 24-1988, Plumbing System Components for Manufactured Homes and Recreational Vehicles; IBR approved for § 3280.604(c).

(3) ANSI/NSF 61-2001, Drinking Water System Components-Health Effects; IBR approved for § 3280.604(b).

(gg) Resources, Applications, Designs, & Controls (RADCO), 3220 East 59th

Street, Long Beach, CA 90805; telephone: 562-272-7231; fax: 562-529-7513; website: www.radcoinc.com.

(1) RADCO DS-010-91, Decorative Gas Appliances for Installation in Solid Fuel Burning Fireplaces, May 1991; IBR approved for § 3280.703(a).

(2) [Reserved]

(hh) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096; telephone: 724-776-0790; website: www.sae.org/.

(1) SAE J533 (REV SEP 2007), (R) Flares for Tubing, revised September 2007; IBR approved for §§ 3280.703(d); 3280.705(f).

(2) [Reserved]

(ii) Steel Joist Institute (SJI), 234 West Cheves Street, Florence, SC 29501; telephone: 843-407-4091; website: www.steeljoist.org.

(1) SJI 1994, Standard Specifications Load Tables and Weight Tables for Steel Joists and Girders, Fortieth Edition, 1994; IBR approved for § 3280.304(b).

(2) [Reserved]

(jj) Truss Plate Institute (TPI), 2670 Crain Highway, Suite 203, Waldorf, MD 20601; telephone: 240-587-5582; fax: 866-501-4012; website: www.tpinst.org.

(1) TPI 1, National Design Standard for Metal Plate Connected Wood Truss Construction, Commentary, and Appendices, copyright 2008; IBR approved for § 3280.304(b):

(i) ANSI/TPI 1-2007;

(ii) TPI 1-2007 Commentary and Appendices.

(2) [Reserved]

(kk) Underwriters' Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062; telephone: 847-272-8800; fax: 847-509-6257; website: www.ul.com.

(1) UL 94-1996, with 2001 revisions, Test for Flammability of Plastic Materials for Parts in Devices and Appliances, Fifth Edition; IBR approved for § 3280.715(e).

(2) UL 103, Standard for Safety, Factory-Built Chimneys for Residential Type and Building Heating Appliances, Eleventh Edition, dated October 15, 2010; IBR approved for § 3280.703(d).

(3) UL 109, Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use, Sixth Edition, dated June 19, 1997, including revisions through January 11, 2005; IBR approved for § 3280.703(d).

(4) UL 127-1996, with 1999 revisions, Factory-Built Fireplaces, Seventh Edition; IBR approved for § 3280.703(d).

(5) UL 174, Standard for Safety Household Electric Storage Tank Water Heaters, Eleventh Edition, dated April 29, 2004, including revisions through December 15, 2016; IBR approved for § 3280.703(a).

(6) UL 181, Standard for Safety Factory-Made Air Ducts and Air

Connectors, Eleventh Edition, dated July 25, 2013, including revisions through April 18, 2017; IBR approved for §§ 3280.702, 3280.703(d); 3280.715(a) and (e).

(7) UL 181A, Standard for Safety Closure Systems for Use with Rigid Air Ducts, Fourth Edition, dated January 8, 2013, including revisions through March 22, 2017; IBR approved for §§ 3280.703(d); 3280.715(c).

(8) UL 181B, Standard for Safety Closure Systems for use with Flexible Air Ducts and Air Connectors, First Edition, 1995, with 1998 revisions; IBR approved for §§ 3280.703(d); 3280.715(c).

(9) UL 217, Single and Multiple Station Smoke Alarms, Fifth Edition, dated January 4, 1999; IBR approved for §§ 3280.209(a); 3280.211(a).

(10) UL 263, Standard for Safety Fire Tests of Building Construction and Materials, Fourteenth Edition, dated June 21, 2011, including revisions through January 31, 2019; IBR approved for § 3280.215(a) and (d).

(11) UL 268, Smoke Detectors for Fire Protective Signaling Systems, Fourth Edition, dated December 30, 1996, including revisions through January 4, 1999; IBR approved for §§ 3280.209(a); 3280.703(a).

(12) UL 307A, Liquid Fuel Burning Heating Appliances for Manufactured Homes and Recreational Vehicles, Eighth Edition, dated February 25, 2009; IBR approved for §§ 3280.703(a); 3280.707(f).

(13) UL 307B, Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles, Fifth Edition, dated October 31, 2006, including revisions through September 17, 2013; IBR approved for § 3280.703(a).

(14) UL 311, Roof Jacks for Manufactured Homes and Recreational Vehicles, Eighth Edition, 1994, with 1998 revisions; IBR approved for § 3280.703(d).

(15) UL 441, Gas Vents, Tenth Edition, dated March 5, 2010, including revisions through June 12, 2014; IBR approved for § 3280.703(d).

(16) UL 499, Standard for Safety Electric Heating Appliances, Fourteenth Edition, dated November 7, 2014, including revisions through February 23, 2017; IBR approved for § 3280.703(a).

(17) UL 569, Standard for Safety Pigtails and Flexible Hose Connectors for LP-Gas, 2013; IBR approved for §§ 3280.703(d); 3280.705(l).

(18) UL 737, Fireplace Stoves, Eighth Edition, 1996, with 2000 revisions; IBR approved for § 3280.703(d).

(19) UL 923 Microwave Cooking Appliances, Fifth Edition, May 23, 2002; IBR approved for § 3280.204(c).

(20) UL 1042, Standards for Safety Electric Baseboard Heating Equipment, Fifth Edition, dated August 31, 2009, including revisions through December 14, 2016; IBR approved for § 3280.703(a).

(21) UL 1096, Electric Central Air Heating Equipment, Fourth Edition, 1986, with revisions July 16, 1986, and January 30, 1988; IBR approved for § 3280.703(a).

(22) UL 1479, Fire Tests of Penetration Firestops, Fourth Edition, dated June 10, 2015; IBR approved for § 3280.215(d).

(23) UL 1482, Solid-Fuel Type Room Heaters, Fifth Edition, 1996, with 2000 revisions; IBR approved for § 3280.703(d).

(24) UL 2021-1997, Fixed and Location-Dedicated Electric Room Heaters, Second Edition, with 1998 revisions; IBR approved for § 3280.703(a).

(25) UL 2034, Standard for Safety Single and Multiple Station Carbon Monoxide Alarms, Fourth Edition, dated March 31, 2017; IBR approved for §§ 3280.209(a); 3280.211(a); 3280.703(a).

(26) UL 60335-2-40-2012, Standard for Safety: Household and Similar Electrical Appliances—Part 2-40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, First Edition, dated November 30, 2012; IBR approved for § 3280.703(a).

(ll) Underwriters' Laboratories of Canada (ULC), 7 Underwriters Road, Toronto, Ontario, Canada M1 R 3A9; telephone: 866-937-3852; fax: 416-757-8727; website: www.ul.com/canada/eng/pages/.

(1) CAN/ULC S102.2-M88, Standard Method of Test for Surface Burning Characteristics of Floor Coverings and Miscellaneous Materials and Assemblies, Fourth Edition, April 1988; IBR approved for § 3280.207(b).

(2) [Reserved]

(mm) Window and Door Manufacturers Association (WDMA), 2001 K Street NW, 3rd Floor North, Washington, DC 20006; telephone: 202-367-1157; website: www.wdma.com.

(1) WDMA I.S.4-09, Industry Specification for Preservative Treatment for Millwork, copyright 2009; IBR approved for § 3280.405(c).

(2) [Reserved]

■ 4. Amend § 3280.5 by revising the first sentence of the introductory text to read as follows:

§ 3280.5 Data plate.

Each dwelling unit of a manufactured home must bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location. * * *

■ 5. Revise § 3280.102 to read as follows:

§ 3280.102 Definitions.

Air, exhaust means air discharged from any space to the outside by an exhaust system.

Air, outdoor means air from outside the building taken into a ventilation system or air from outside the building that enters a space through infiltration or natural ventilation openings.

Exhaust system means one or more exhaust fans that remove air from the building, causing outdoor air to enter by ventilation inlets or normal leakage paths through the building envelope.

Gross floor area means all space, wall to wall, including recessed entries not to exceed five (5) square feet and areas under built-in vanities and similar furniture. When the ceiling height is less than that specified in § 3280.104, the floor area under such ceilings must not be included in the gross floor area. Floor area of closets must also not be included in the gross floor area.

Habitable room means a room or enclosed floor space arranged for living, eating, food preparation, or sleeping purposes not including bathrooms, foyers, hallways, and other accessory floor space.

Laundry area means an area containing or designed to contain a laundry tray, clothes washer and/or clothes dryer.

Mechanical ventilation means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-turbine ventilators and mechanically operated windows.

Natural ventilation means ventilation occurring as a result of natural forces, such as wind pressure or differences in air density, through intentional openings such as open windows or doors.

Supply system means one or more fans that supply outdoor air to the building, causing indoor air to leave by normal air leakage through the building envelope.

Ventilation means the process of supplying outdoor air to or removing indoor air from the manufactured home by natural or mechanical means. Such air may or may not have been conditioned.

■ 6. Amend § 3280.103 by:

■ a. Revising paragraphs (b) introductory text, (b)(1) and (3), (c)(2) and (3), and (d); and

■ b. Adding paragraph (e).

The revisions and addition read as follows:

§ 3280.103 Light and ventilation.

(b) *Whole-house ventilation.* Each dwelling unit of a manufactured home must be provided with a whole-house mechanical ventilation having the capability to provide a minimum capacity of 0.035 ft³/min/ft² of interior floor space or its hourly average equivalent. This ventilation capacity must be in addition to any openable window area. In no case shall the installed ventilation capacity of the system be less than 50 cfm. The following criteria must be adhered to:

(1) The ventilation capacity must be provided by a mechanical ventilation system or a combination natural and mechanical ventilation system.

(3) The ventilation supply system or a portion of the ventilation supply system is permitted to be integral with the home's heating or cooling system. The supply system must be capable of operating independently of the heating and cooling modes. A mechanical ventilation supply system that is integral with the heating and cooling system is to be listed as part of the heating and cooling system or listed as suitable for use with that system.

(c) * * *

(2) Kitchens must be provided with a local exhaust system that is capable of exhausting 100 cfm to the outside of the home. The local exhaust system must be located as close as possible to the range or cook top, but in no case farther than 3 feet horizontally from the range or cooktop.

(3) Each bathroom and separate toilet compartment must be provided with a local exhaust system capable of exhausting 50 cfm to the outside of the home. A separate toilet compartment may be provided with 1.5 square feet of openable glazed area in place of a local exhaust system, except in Uo value Zone 3.

(d) *Optional ventilation provisions.* As an option to complying with the provisions of paragraphs (b) and (c) of this section, ventilation systems complying with ANSI/ASHRAE 62.2 (incorporated by reference, see § 3280.4) may be used.

(e) *Airflow rating.* During the design stage, the airflow rating at a pressure of

0.25 inch water column may be used, provided the duct sizing meets the prescriptive requirements of table 5.3 in ANSI/ASHRAE 62.2 (incorporated by reference, see § 3280.4) or ventilation system manufacturer's design criteria.

■ 7. Amend § 3280.105 by revising paragraphs (a) introductory text, (a)(2)(i), and (b)(2) to read as follows:

§ 3280.105 Exit facilities; exterior doors.

(a) *Number and location of exterior doors.* Each dwelling unit of a manufactured home must have a minimum of two exterior doors located remotely from each other.

(2) * * *

(i) Both of the required doors must not be in the same room. Rooms are defined by their use or purpose.

(b) * * *

(2) All exterior swinging doors must provide a minimum 28 inch wide by 74 inch high clear opening. Door seals and/or door stops are permitted to reduce the opening, either vertically or horizontally, by a maximum of one inch, except for the one egress door where door seals and/or door stops are not permitted to reduce the opening. All exterior sliding glass doors must provide a minimum 28 inch wide by 72 inch high clear opening. At least one exterior egress door must provide a minimum of 32 inch wide by 74 inch high clear opening and door seals and/or door stops are not permitted to reduce the opening.

■ 8. Amend § 3280.109 by revising paragraph (a) to read as follows:

§ 3280.109 Room requirements.

(a) Each dwelling unit of a manufactured home must have at least one living area with a minimum of 150 square feet of gross floor area.

■ 9. Revise § 3280.112 to read as follows:

§ 3280.112 Hallways.

Hallways must have a minimum horizontal dimension of 28 inches measured from the interior finished surface to the interior finished surface of the opposite wall. For manufactured homes with 14 feet of inside width or more, hallways must have a minimum horizontal dimension of 30 inches measured from the interior finished surface to the interior finished surface of the opposite wall. When appliances are installed in a laundry area, the measurement must be from the front of the appliance to the opposite finished

interior surface. When appliances are not installed and a laundry area is provided, the area must have a minimum clear depth of 27 inches in addition to the 28 inches, or 30 inches for manufactured homes with 14 feet of inside width or greater, required for passage. In addition, a notice of the available clearance for washer/dryer units must be posted in the laundry area. Minor protrusions into the minimum hallway width by doorknobs, trim, smoke alarms or light fixtures are permitted.

- 10. Amend § 3280.113 by revising paragraph (d) to read as follows:

§ 3280.113 Glass and glazed openings.

* * * * *

(d) Safety glazing is any glazing material capable of meeting the requirements of Consumer Product Safety Commission 16 CFR part 1201, or ANSI Z97.1 (incorporated by reference, see § 3280.4).

* * * * *

- 11. Add § 3280.115 to subpart B to read as follows:

§ 3280.115 Sound transmission between multi-dwelling unit manufactured homes.

(a) *Scope.* This section applies to common interior walls, partitions, and floor/ceiling assemblies between adjacent dwelling units.

(b) *Air-borne sound.* Walls, partitions, and floor/ceiling assemblies between stories separating dwelling units from each other must have a sound transmission class (STC) of not less than 34 for air-borne noise when tested in accordance with ASTM E90 (incorporated by reference, see § 3280.4) or calculated. Penetrations or openings in construction assemblies for piping; electrical devices; recessed cabinets; bathtubs; soffits; or heating, ventilating, or exhaust ducts must be sealed, lined, insulated or otherwise treated to maintain the required ratings. This requirement does not apply to dwelling unit entrance doors; however, such doors must be tight fitting to the frame and sill.

(c) *Structure-borne sound.* Floor/ceiling assemblies between stories separating dwelling units must have an impact insulation class (IIC) rating of not less than 34 when tested in accordance with ASTM E492 (incorporated by reference, see § 3280.4).

- 12. Amend § 3280.203 by revising paragraph (c)(1)(ii) to read as follows:

§ 3280.203 Flame spread limitations and fire protection requirements.

* * * * *

(c) * * *

(1) * * *

(ii) Exposed bottoms and sides of kitchen cabinets as required by § 3280.204 except that non-horizontal surfaces above the horizontal plane formed by the bottom of the range hood are not considered exposed;

* * * * *

- 13. Amend § 3280.204 by revising the first sentence of paragraph (a) and adding paragraph (f) to read as follows:

§ 3280.204 Kitchen cabinet protection.

(a) The exposed bottom and sides of combustible kitchen cabinets over cooking ranges to a horizontal distance of 6 inches from the outside edge of the cooking range must be protected with at least $\frac{5}{16}$ inch thick gypsum board or equivalent limited combustible material.

* * * * *

(f) Range hood finish materials must be installed with at least $\frac{5}{16}$ inch thick gypsum board or equivalent limited combustible material between the metal range hood and finish materials. Except for sealants and other trim materials 2 inches or less in width, finish materials shall have a flame spread rating not exceeding the Flame Spread Index of 200.

- 14. Amend § 3280.209 by revising paragraph (a) read as follows:

§ 3280.209 Smoke alarm requirements.

(a) *Labeling.* Each smoke alarm required under paragraph (b) of this section must conform with the requirements of UL 217 (incorporated by reference, see § 3280.4) or UL 268 (incorporated by reference, see § 3280.4), and must bear a label to evidence conformance. Combination smoke and carbon monoxide alarms shall be listed and must bear a label to evidence conformance with UL 217 and UL 2034.

* * * * *

- 15. Amend § 3280.211 by revising paragraph (a) to read as follows:

§ 3280.211 Carbon monoxide alarm requirements.

(a) *Labeling.* Carbon monoxide alarms shall be listed and must bear a label to evidence conformance with UL 2034 (incorporated by reference, see § 3280.4). Combination carbon monoxide and smoke alarms shall be listed and must bear a label to evidence conformance with UL 2034 and UL 217

(incorporated by reference, see § 3280.4).

* * * * *

- 16. Add §§ 3280.214 through 3280.216 to subpart C to read as follows:

§ 3280.214 Fire sprinkler system requirements.

(a) *General.* (1) Fire sprinkler systems are not required by this subpart; however, when a manufacturer installs a fire sprinkler system as an optional feature selected by the consumer or to meet State or local laws and regulations, this section establishes the requirements for the installation of a fire sprinkler system in a manufactured home.

(2) This section applies to both stand-alone and multipurpose fire sprinkler systems that do not include the use of antifreeze.

(3) A back-flow preventer is not required to separate a stand-alone sprinkler system from the water distribution system.

(b) *Design.* The design of the fire sprinkler system itself shall be in accordance with NFPA 13D (incorporated by reference, see § 3280.4) or a design which is deemed to be equivalent to the design method used in NFPA 13D.

(c) *Sprinkler location.* Sprinklers must be installed to protect all areas inside the manufactured home except:

(1) Attics and normally unoccupied concealed spaces;

(2) Closets not exceeding 24 square feet in area, with the smallest dimension not greater than three feet and having at least one base layer of minimum $\frac{5}{16}$ inch thick gypsum board on wall and ceiling surfaces;

(3) Bathrooms not more than 55 square feet in area;

(4) Garages, carports, open attached porches and similar structures; and

(5) Closets or alcoves containing heat-producing appliance, regardless of size if the closet or alcove complies with § 3280.203(b)(3).

(d) *Sprinklers.* Sprinklers shall be new, listed residential sprinklers and shall be installed in accordance with the sprinkler manufacturer's installation instructions.

(e) *Temperature rating and separation from heat sources.* Sprinklers are to have a temperature rating and be separated from heat sources as follows:

(1) Sprinklers separated from heat sources as required by the sprinkler manufacturer's installation instructions are to have a temperature rating of no less than 135 °F (57 °C) and not more than 170 °F (77 °C).

(2) Sprinklers located within the distance to a heat source as specified in table 7.5.5.3 of NFPA 13D (incorporated by reference, see § 3280.4) are to have an intermediate temperature rating not less than 175 °F (79 °C) and not more than 225 °F (107 °C) when installed in the following locations:

- (i) Attics;
- (ii) Concealed spaces located directly beneath a roof; and
- (iii) Directly under skylights where the sprinkler is exposed to direct sunlight.

(f) *Freezing areas.* Piping must be protected from freezing as required by § 3280.603(b)(4). Where sprinklers are required in areas subject to freezing, dry-sidewall or dry-pendent sprinklers extending from nonfreezing area into a freezing area, must be installed.

(g) *Sprinkler area of coverage.* The area of coverage of a single sprinkler shall not exceed 400 square feet and shall be based on the sprinkler listing and the sprinkler manufacturer's installation instructions. Sprinkler discharge shall not be blocked by obstructions unless additional sprinklers are installed to protect the obstructed area. Sprinkler separation from obstructions shall comply with the minimum distances specified in the sprinkler manufacturer's instructions. Pendent sprinklers within 3 feet of the center of a ceiling fan, surface-mounted ceiling light or other similar object shall be considered to be obstructed and additional sprinklers shall be installed, except that in all closets 50 square feet or less in size, one sprinkler shall be sufficient. Sidewall sprinklers within 5 feet of the center of a ceiling fan, surface-mounted ceiling light or other similar object shall be considered to be obstructed and additional sprinklers shall be installed.

(h) *Sprinkler installation on systems assembled with solvent cement.* The solvent cementing of threaded adapter fittings shall be completed and threaded adapters for sprinklers shall be verified as being clear of excess cement prior to the installation of sprinklers on systems assembled with solvent cement.

(i) *Painting, caulking or modifying sprinklers is prohibited.* Painted, caulked, modified, or damaged sprinklers shall be replaced.

(j) *Sprinkler piping support.* Sprinkler piping shall be supported in accordance with § 3280.608. Sprinkler piping must comply with all requirements for cold-water distribution piping. For multipurpose piping systems, the sprinkler piping shall connect to and be part of the cold-water distribution piping system. Nonmetallic pipe and tubing, such as CPVC and PEX, shall be

listed for use in residential fire sprinkler systems. Nonmetallic pipe and tubing systems shall be protected from exposure to the living space by a layer of not less than 5/16 inch thick gypsum wallboard, 1/2 inch thick plywood, or other material having a 15 minute fire rating. Pipe protection shall not be required where exposed piping is permitted by the pipe listing and in areas that do not require protection with sprinklers as specified in paragraph (c) of this section.

(k) *Shutoff valves.* Shutoff valves shall not be installed in any location where the valve would isolate piping serving one or more sprinklers, except for shutoff valves installed for the entire water distribution system.

(l) *Means of drainage.* A means to drain the sprinkler system shall be provided on the system side of the water supply inlet.

(m) *Minimum flow rate.* The sprinkler system must provide at least the flow rate required to produce a minimum discharge density of 0.05 gpm/ft² from each sprinkler and be determined by using the sprinkler manufacturer's published data for the specific sprinkler model based on the area of coverage, ceiling configuration, temperature rating and any other conditions specified by the sprinkler manufacturer.

(n) *Design flow rate.* The design flow rate for the sprinkler system shall be based on the following:

(1) The design flow rate for a room having only one sprinkler shall be the flow rate required for that sprinkler, as determined by paragraph (m) of this section.

(2) The design flow rate for a room having two or more sprinklers shall be determined by identifying the sprinkler in that room with the highest required flow rate, based on paragraph (m) of this section, and multiplying that flow rate by two.

(3) Where the sprinkler manufacturer's instructions specify different criteria for ceiling configurations that are not smooth, flat and horizontal, the required design flow rate for the room shall comply with the sprinkler manufacturer's instructions.

(4) The design flow rate for the sprinkler system shall be the flow rate required by the room with the largest flow rate, based on paragraph (n)(1), (2), or (3) of this section.

(5) For the purposes of this section, it shall be permissible to reduce the design flow rate for a room by subdividing the space into two or more rooms, where each room is evaluated separately with respect to the required design flow rate. Walls and a ceiling shall bound each room. Openings in

walls shall have a lintel (header) not less than 8 inches in depth and each lintel shall form a solid barrier between the ceiling and the top of the opening.

(o) *Pipe sizing and minimum required supply pressure.* (1) The piping to sprinklers shall be sized for the flow required by paragraph (n) of this section. The flow rate required to supply the plumbing fixtures shall not be required to be added to the sprinkler design flow rate. The minimum pipe size from the water supply inlet to any sprinkler shall be 3/4 inch diameter. Threaded adapter fittings at the point where sprinklers are attached to the piping shall be a minimum of 1/2 inch diameter.

(2) Piping shall be sized by determining the Available Pressure to offset friction loss in piping and identifying a piping material, diameter and length in accordance with the following:

(i) *Minimum supply pressure required.* The following equation shall be used to determine the required supply pressure at the fire sprinkler system supply inlet.

Equation 1 to Paragraph (o)(2)(i):

$$\text{PSUP} = \text{PT} + \text{PLE} + \text{PSP}$$

Where:

PSUP = Pressure required at the fire sprinkler system supply inlet. (Note: This is the pressure which is entered on the Fire Sprinkler System Certificate under "Minimum Water Supply Required.")

PT = Pressure loss in the fire sprinkler system piping.

PLE = Pressure loss from elevation change. (Note: Normally 4.4 psi for single story houses and 8.7 psi for two story houses).

PSP = Maximum pressure required by a sprinkler.

(ii) [Reserved]

(3) Determination of PSUP shall be in accordance with the following procedure:

(i) *Step 1.* Determine PT. For the specific design in question determine the distance (developed length) from the fire sprinkler system supply inlet to the most remote sprinkler. Refer to tables 8.4.10.2(d) through (i) of NFPA 13D (incorporated by reference, see § 3280.4) and select the correct table for the fire sprinkler system pipe material and pipe size used. Using the system design flow rate from paragraph (n) of this section find the "Allowable length of pipe" column, which is closest to, but not less than, the developed length for the design in question. The "Available Pressure" in the column heading is PT. (Note: Interpolation between "Allowable length of pipe" (developed length) and "Available Pressure" (PT) is permitted. Example: Using table

8.4.10.2(d) of NFPA 13D, Sprinkler Flow Rate = 16 gpm, developed length = 70 feet, Available Pressure (PT) = 17.5 psi.)

(ii) *Step 2.* Determine PLE. Refer to table 8.4.10.2.(c) of NFPA 13D. The elevation used in applying the table shall be the difference between the highest sprinkler and the fire sprinkler system supply inlet. Interpolation is permitted. (*Note:* If the highest sprinkler is lower than the fire sprinkler system supply inlet then subtract this value in equation 1 to paragraph (o)(2)(i), instead of adding it.)

(iii) *Step 3.* Determine PSP. Determine the maximum pressure required by any individual sprinkler based on the flow rate for each sprinkler as set forth in paragraph (n) of this section. The required pressure is provided in the data provided by the sprinkler manufacturer for the specific model based on the selected flow rate.

(p) *Testing.* The fire sprinkler system piping shall be subject to the same test as the water distribution system in § 3280.612(a). For multipurpose fire sprinkler systems, it shall be permitted to test the fire sprinkler system piping simultaneously with the domestic water distribution system.

(q) *Fire Sprinkler System Certificate.* The manufacturer must permanently affix a Fire Sprinkler System Certificate adjacent to the data plate. The manufacturer must specify on the Fire Sprinkler System Certificate the minimum required pressure in pounds per square inch (psi) and flow rate in gallons per minute (gpm) for the water supply system. The Fire Sprinkler System Certificate is to include all the statements and required information arranged in substantially the same layout as shown in the following example.

Example 1 to Paragraph (q)—Example Certificate

Fire Sprinkler System Certificate

Note: This label contains important information about the fire sprinkler system installed in this home. Please do not remove, alter, or cover this label.

General Information

Name of Manufacturer: _____

Manufactured Home Serial Number: _____

The residential fire sprinkler system installed in this dwelling unit is in compliance with 24 CFR part 3280.214 Fire Sprinkler System Requirements. The manufactured home installer must ensure that water supply testing is completed by a fire protection technician, as required below at the home site.

Warning: When necessary, replace components only with identical components or those determined to have equivalent performance characteristics with respect to flows and pressures.

Minimum Water Supply Required

Warning: For this system to operate properly, the following minimum supply of water must be available at the point of connection to the residential fire sprinkler system (to be completed by the home manufacturer):

gpm (gallons per minute) at not less than _____
psi (pounds per square inch)

The water supply shall have the capacity to provide the above required design flow rate for the sprinklers for a period of time as follows:

1. Seven minutes for manufactured homes one story in height and less than 2,000 square feet in area.

2. Ten minutes for manufactured homes two or more stories in height or equal to or greater than 2,000 square feet in area.

Where a water supply tank, a well system or a combination thereof is used, any combination of tank storage or well system shall be permitted to meet the capacity requirement.

An installer shall ensure that a fire protection technician completes and signs this Fire Sprinkler System Certificate and shall maintain a copy of the test report from the onsite testing in accordance with the home manufacturer's instructions and that the above listed required minimum water supply is available.

Company and/or Individual Name of Fire Protection Technician: _____

License/Certification Number of Technician: _____

Address of Technician: _____

Date Water Supply Tested: _____

Warning: This structure contains a residential fire sprinkler system. Do not alter or make additions to the water supply without first contacting the home manufacturer or a fire protection technician. Any control valve(s) on the water supply to the residential fire sprinkler system must be in the full, open position for the system to operate properly. If the valves must be closed temporarily to service the sprinkler, verify that they are left fully open and secured when service is complete.

(r) *Sign or valve tag.* A sign or valve tag shall be installed at the fire sprinkler

system supply inlet stating the following:

Warning, the water supply system supplies fire sprinklers that require specific flows and pressures to fight a fire. Devices that restrict the flow or decrease the pressure or automatically shut off the water to the fire sprinkler system, such as water filtration systems, water softeners and automatic shutoff valves, shall not be added to this system during installation without HUD approval. Later actions that may impact the water supply system should not be completed without first contacting the home manufacturer or a fire protection technician. Please do not remove this sign.

(s) *Component instructions.* If the manufacturer of a fire sprinkler system component used in a system provides written instructions and procedures for the operation, maintenance, periodic testing, and/or repair of the component, a copy of the instructions and procedures shall be left in each home for the consumer.

(t) *Manufacturer's installation instructions for fire sprinkler systems.* Manufacturer's installation instructions must provide the following:

(1) *Specific instructions for the inspection and testing of the fire sprinkler system during the installation of the home.* Testing requirements are to be consistent with § 3280.612(a).

(2) *Required statement.* If this manufactured home contains a fire sprinkler system, an installer shall ensure a fire protection technician tests the water supply at the site and completes the Fire Safety System Certificate and that the test reports the minimum conditions described on the Fire Sprinkler System Certificate in the home (located next to the data plate).

§ 3280.215 Multi-dwelling unit manufactured homes.

(a) *General.* In manufactured homes with more than one dwelling unit, each dwelling unit must be separated from each other by wall and floor assemblies having not less than a 1 hour fire resistance rating when tested in accordance with ASTM E119 or UL 263 (both incorporated by reference, see § 3280.4) or having a fire resistance rating of not less than a 1 hour when calculated in accordance with chapter 16 of the AWC National Design Specification (NDS) for Wood Construction, with Supplement (incorporated by reference, see § 3280.4).

(b) *Fire resistance walls.* Fire-resistance-rated floor/ceiling and wall assemblies must extend to and be tight against the exterior wall, and wall

assemblies must extend from the foundation to the underside of the roof sheathing except as follows:

(1) Wall assemblies need not extend through attic spaces where the ceiling is protected by not less than $\frac{5}{8}$ inch Type X gypsum board and attic draftstop constructed as specified in § 3280.216 is provided above and along the wall assembly separating the dwelling units; and

(2) The structural framing supporting the ceiling is protected by not less than $\frac{1}{2}$ inch gypsum board or equivalent.

(3) A fire resistance rating of $\frac{1}{2}$ hour shall be permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with § 3280.214.

(c) *Supporting construction.* Where floor assemblies are required to be fire resistant rated by this section, the supporting construction of such assemblies must have an equal or greater fire resistance rating.

(d) *Dwelling unit rated penetrations.* Penetrations of wall or floor-ceiling assemblies in multi-dwelling unit manufactured homes are required to be fire-resistance rated in accordance with this section.

(1) *Through penetrations.* (i) Through penetrations must be installed as tested in the approved fire-resistance rated assembly; or

(ii) Through penetrations must be protected by an approved penetration fire stop system installed as tested in accordance with ASTM E814 or UL 1479 (both incorporated by reference, see § 3280.4), with a positive pressure differential of not less than 0.01 inch of water and must have an *F* rating of not less than the required fire resistance rating of the wall or floor-ceiling assembly penetrated; or

(iii) Where the penetrating items are steel, ferrous or copper pipes, tubes, or conduits, the material used to fill the annular space must prevent the passage of flame and hot gasses sufficient to ignite cotton waste where subjected to ASTM E119 or UL 263 (both incorporated by reference, see § 3280.4) time temperature fire conditions under a positive pressure differential of not less than 0.01 inch of water at the location of the through penetration for the time period equivalent to the fire resistance rating of the construction penetrated.

(2) *Membrane penetrations.* Membrane penetrations must comply with paragraph (d)(1) of this section. Where walls are required to have a fire resistance rating, recessed fixtures must be installed so that the required fire resistance rating will not be reduced except as follows:

(i) By membrane penetrations of fire-resistant-rated walls, ceiling/floors and partitions by steel electrical boxes provided they do not exceed 16 square inches in area and the aggregate area of the openings through the membrane does not exceed 100 square inches in any 100 square feet of wall area. The annular space between the wall membrane and the box must not exceed $\frac{1}{8}$ inch. Such boxes on opposite sides of the wall must be separated by one of the following:

(A) A horizontal distance of not less than 24 inches where the wall or partition is constructed with individual non-communicating stud cavities; or

(B) A horizontal distance of not less than the depth of the wall cavity, where the wall cavity is filled with loose-fill insulation; or

(C) Solid fire blocking in accordance with § 3280.206; or

(D) Protecting both boxes with listed putty pads; or

(E) Other listed materials and methods.

(ii) By membrane penetrations of listed electrical boxes of any materials provided that the boxes have been tested for use in fire resistance rated assemblies and are installed in accordance with the instructions included with the listing. The annular space between the wall membrane and the box must not exceed $\frac{1}{8}$ inch unless otherwise noted. Such boxes on opposite sides of the wall must be separated by one of the following:

(A) The horizontal distance specified in the listing of the electrical boxes; or

(B) Solid fire blocking in accordance with § 3280.206; or

(C) Protecting boxes with listed putty pads; or

(D) Other listed materials and methods.

(iii) By the annular space created by the penetration of a fire sprinkler provided that it is covered by a metal escutcheon plate.

§ 3280.216 Draftstopping requirements for multi-dwelling unit manufactured homes.

(a) When there is usable space both above and below the concealed space of a floor/ceiling assembly in multi-dwelling unit manufactured homes, draftstops must be installed so that the area of the concealed space does not exceed 1,000 square feet. Draftstopping must divide the concealed space into approximately equal areas. Where the assembly is enclosed by a floor membrane above and a ceiling membrane below, draftstopping shall be provided in floor-ceiling assemblies under the following circumstances:

(1) Ceiling is suspended under the floor framing; or

(2) Floor framing is constructed of truss type open-web or perforated members.

(b) Draftstopping materials must not be less than $\frac{1}{2}$ inch gypsum board, $\frac{3}{8}$ inch wood structural panels, or other approved materials adequately supported.

(c) Draftstopping must be installed parallel to the floor framing members.

(d) The integrity of all draftstops must be maintained.

■ 17. Amend § 3280.303 by revising paragraph (b) to read as follows:

§ 3280.303 General requirements.

* * * * *

(b) *Construction.* All Construction methods must be in conformance with an approved quality assurance manual as provided by §§ 3282.203 and 3282.361(c) and accepted engineering practices to ensure durable, livable, and safe housing.

* * * * *

■ 18. Revise and republish § 3280.304 to read as follows:

§ 3280.304 Materials.

(a) Dimension and board lumber must not exceed 19 percent moisture content at the time of installation, except that treated lumber used for exterior purposes only and does not extend into the main home construction may have a moisture content exceeding 19 percent.

(b) The standards for some of the generally used materials and methods of construction that are listed in this paragraph (b) are incorporated by reference (see § 3280.4).

(1) *Aluminum.* (i) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1—A (Aluminum Association).

(ii) Aluminum Design Manual, Specifications and Guidelines for Aluminum Structures, Part 1—B (Aluminum Association).

(2) *Steel.* (i) Specification for Structural Steel Buildings—AISC 360.

(ii) North American Specification for the Design of Cold-Formed Steel Structural Members—AISI S100.

(iii) Specification for the Design of Cold-Formed Stainless Steel Structural Members—SEI/ASCE 8.

(iv) Standard Specifications Load Tables and Weight Tables for Steel Joists and Joist Girders—SJI.

(v) Structural Applications of Steel Cables for Buildings—ASCE 19.

(vi) Standard Specification for Strapping, Flat Steel and Seals—ASTM D3953.

(3) *Wood and wood products.* (i) Basic Hardboard—ANSI A135.4 (Composite Panel Association).

(ii) Prefinished Hardboard Paneling—ANSI A135.5 (Composite Panel Association).

(iii) Engineered Wood Siding—ANSI A135.6 (Composite Panel Association).

(iv) American National Standard for Hardwood and Decorative Plywood—ANSI/HPVA HP-1 (Decorative Hardwoods Association).

(v) Structural Design Guide for Hardwood Plywood Wall Panels—HP-SG (Decorative Hardwoods Association).

(vi) For Wood Products—Structural Glued Laminated Timber—ANSI/AITC A190.1.

(vii) Structural Plywood (With Typical APA Trademarks)—NIST PS 1.

(viii) APA Design/Construction Guide, Residential and Commercial Structures—APA E30-P.

(ix) National Design Standard for Metal Plate Connected Wood Truss Construction, TPI 1.

(x) Design and Fabrication of All-Plywood Beams—H815G.

(xi) Panel Design Specification—APA D510C.

(xii) Design and Fabrication of Glued Plywood-Lumber Beams—APA S812S.

(xiii) Design and Fabrication of Plywood Curved Panels—APA S811P.

(xiv) Design and Fabrication of Plywood Sandwich Panels, APA U814J.

(xv) Performance Standard for Wood-Based Structural Use Panels—NIST PS 2.

(xvi) Design and Fabrication of Plywood Stressed-Skin Panels—APA U813M.

(xvii) National Design Specifications for Wood Construction, with Supplement, Design Values for Wood Construction—AWC NDS.

(xviii) Wood Structural Design Data (AFPA).

(xix) Span Tables for Joists and Rafters: American Softwood Lumber Standard (PS 20-10) Sizes—AWC-2012.

(xx) Design Values for Joists and Rafters, Supplement to Span Tables for Joists and Rafters—AWC-2012.

(xxi) Particleboard—ANSI A208.1 (Composite Panel Association).

(xxii) North American Fenestration Standard/Specification for Windows, Doors and Skylights—AAMA/WDMA/CSA 101/I.S.2/A440 (CSA Group).

(xxiii) Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard—ASTM D781.

(xxiv) Standard Test Methods for Direct Moisture Content Measurement of Wood and Wood-Base Materials—ASTM D4442.

(xxv) Standard Test Method for Laboratory Standardization and Calibration of Hand-Held Moisture Meters—ASTM D4444.

(xxvi) Medium Density Fiberboard (MDF) For Interior Applications—ANSI A208.2.

(xxvii) Standard Test Methods for Fire Tests of Building Construction and Materials—ASTM E119.

(xxviii) Engineered Wood Construction Guide—APA E30V.

(xxix) Plywood Design—APA Y510.

(4) *Other.* (i) Standard Specification for Gypsum Board—ASTM C1396/C1396M.

(ii) [Reserved].

(5) *Fasteners.* (i) ICC-ES Evaluation Report: Power Driven Staples and Nails—ESR 1539.

(ii) [Reserved]

(6) *Unclassified.* (i) Minimum Design Loads for Buildings and Other Structures—ANSI/ASCE.

(ii) Safety Glazing Materials Used in Buildings—Safety Performance Specifications and Methods of Test—ANSI Z97.1.

(iii) Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Siding—ASTM D3679-09a.

(iv) Standard Practice for Installation of Rigid Poly (Vinyl Chloride) (PVC) Siding and Soffit—ASTM D4756.

(v) Standard Specification for Polypropylene (PP) Siding—ASTM D7254.

(c) Materials and methods of construction utilized in the design and construction of manufactured homes which are covered by the standards listed in this section, or any applicable portion thereof shall comply with these requirements.

(d) Engineering analysis and testing methods contained in these references shall be utilized to judge conformance with accepted engineering practices required in § 3280.303(c).

(e) Materials and methods of installation conforming to these standards shall be considered acceptable when installed in conformance with the requirements of this part.

(f) Materials meeting the standards listed in this section (or the applicable portion thereof) are considered acceptable unless otherwise specified herein or unless substantial doubt exists as to conformance.

(g) Wood products shall be identified as complying with the appropriate standards.

■ 19. Amend § 3280.305 by revising paragraphs (j)(1) and (k)(2) to read as follows:

§ 3280.305 Structural design requirements.

* * * * *

(j) * * *

(1) All welds must be made in accordance with the applicable

provisions of the Specification for Structural Steel Buildings, AISC 360 (incorporated by reference, see § 3280.4); the North American Specification for the Design of Cold-Formed Steel Structural Members, AISI S100 (incorporated by reference, see § 3280.4); and the Specification for the Design of Cold-Formed Stainless Steel Structural Members, SEI/ASCE 8 (incorporated by reference, see § 3280.4).

* * * * *

(k) * * *

(2) For roofs with slopes less than 7:12 that contain an attic area or for portions of roofs with slopes 7:12 or greater that do meet the ceiling height/living space requirements of the standards, the attic floor must be designed for a storage live load of 20 pounds per square foot (psf).

(i) Attic area as used within this section are those spaces where the maximum clear height between joist and rafters is 42 inches or greater or where there are two or more adjacent trusses with web configurations capable of accommodating an assumed rectangle 42 inches high by 24 inches in width or greater, within the plane of the trusses.

(ii) The live load need only be applied to those portions of the joist or truss bottom chords where all of the following criteria are met:

(A) The attic area is accessible from an opening not less than 20 inches in width and 30 inches in length that is located where the clear height in the attic is a minimum of 30 inches; and

(B) The slope of the joists of the truss bottom chord are no greater than 2 inches vertical to 12 inches horizontal; and

(C) Required insulation depth is less than the joist or truss bottom chord member depth.

■ 20. Amend § 3280.307 by adding paragraph (f) to read as follows:

§ 3280.307 Resistance to elements and use.

* * * * *

(f) The exterior wall envelope must be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a Water Resistive Barrier (WRB) behind the exterior cladding and a means of draining water that enters the assembly.

■ 21. Add § 3280.309 to subpart D to read as follows:

§ 3280.309 Standard for vinyl siding and polypropylene siding used in manufactured homes.

(a) *Scope.* This section establishes the requirements for vinyl siding and

polypropylene siding used in manufactured homes.

(b) *Standards*—(1) *Vinyl siding*. All vinyl siding must comply with the requirements of ASTM D3679 (incorporated by reference, see § 3280.4) and must be certified or listed and labeled as conforming to those requirements.

(2) *Polypropylene siding*. All polypropylene siding must comply with the requirements of ASTM D7254 (incorporated by reference, see § 3280.4) and must be certified or listed and labeled as conforming to those requirements.

(c) *Installation*. Vinyl siding and soffit installation must be installed in accordance with the manufacturer's installation instructions. Vinyl siding and soffit installation must be based on ASTM D4756 (incorporated by reference, see § 3280.4).

■ 22. Amend § 3280.403 by revising paragraphs (b)(1), (b)(2) introductory text, (d)(1), and (e) to read as follows:

§ 3280.403 Requirements for windows, sliding glass doors, and skylights.

* * * * *

(b) *Standard*. (1) All primary windows and sliding glass doors must comply with AAMA 1701.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4), except the exterior and interior pressure tests must be conducted at the minimum design wind loads required for components in § 3280.305(c)(1).

(2) All skylights must comply with AAMA/WDMA/CSA 101/I.S.2/A440 (incorporated by reference, see § 3280.4).

* * * * *

(d) * * *

(1) Safety glazing materials, where used shall meet ANSI Z97.1 (incorporated by reference, see § 3280.4).

* * * * *

(e) *Certification*. All primary windows and sliding glass doors to be installed in manufactured homes must be certified as complying with AAMA 1701.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4). This certification must be based on tests conducted at the design wind loads specified in § 3280.305(c)(1).

(1) All such windows and doors must show evidence of certification by affixing a quality certification label to the product from an independent product certification body accredited to ISO/IEC 17065 (incorporated by reference, see § 3280.4).

(2) In determining certifiability of the products, an independent quality

assurance agency must conduct pre-production specimen tests in accordance with AAMA 1702.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4). Further, such agency must inspect the product manufacturer's facility at least twice per year.

(3) All skylights installed in manufactured homes must be certified as complying with AAMA 1701.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4).

* * * * *

■ 23. Amend § 3280.404 by revising paragraphs (b) and (e) to read as follows:

§ 3280.404 Standard for egress windows and devices for use in manufactured homes.

* * * * *

(b) *Performance*. Egress windows including auxiliary frame and seals, if any, must meet all requirements of AAMA 1701.2 and AAMA 1704 or AAMA/WDMA/CSA 101/I.S.2/A440 (all incorporated by reference, see § 3280.4).

(1) *Loading*. Exterior and interior pressure tests for components and cladding must be conducted meeting or exceeding the minimum design wind loads required by § 3280.305(c)(1).

(2) *Dimensions*. All egress systems must have a minimum clear horizontal dimension of 20 inches and a minimum clear vertical dimension of 24 inches and have a clear opening of at least 5 ft².

* * * * *

(e) *Certification of egress windows and devices*. (1) Egress windows and devices must be listed in accordance with the procedures and requirements of AAMA 1701.2 and AAMA 1704 or AAMA/WDMA/CSA 101/I.S.2/A440 (all incorporated by reference, see § 3280.4). This certification must be based on tests conducted meeting or exceeding the minimum design wind loads specified in § 3280.305(c)(1).

(2) All such windows and devices must show evidence of certification by affixing a quality certification label to the product from an independent product certification body accredited to ISO/IEC 17065 (incorporated by reference, see § 3280.4).

* * * * *

■ 24. Amend § 3280.405 by revising paragraphs (b), (c), and (e) to read as follows:

§ 3280.405 Standard for swinging exterior passage doors for use in manufactured homes.

* * * * *

(b) *Performance requirements*. The design and construction of exterior door

units must meet all requirements of AAMA 1702.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4).

(c) *Materials and methods*. Any material or method of construction must conform to the performance requirements as outlined in paragraph (b) of this section. Plywood must be exterior type and preservative treated in accordance with WDMA I.S.4 (incorporated by reference, see § 3280.4).

* * * * *

(e) *Certification*. All swinging exterior doors to be installed in manufactured homes must be certified as complying with AAMA 1702.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4).

(1) All such doors must show evidence of certification by affixing a quality certification label to the product from an independent product certification body accredited to ISO/IEC 17065 (incorporated by reference, see § 3280.4).

(2) In determining certifiability of the products, an independent quality assurance agency must conduct a pre-production specimen test in accordance with AAMA 1702.2 or AAMA/WDMA/CSA 101/I.S.2/A440 (both incorporated by reference, see § 3280.4).

* * * * *

■ 25. Amend § 3280.504 by revising paragraphs (a)(1) and (c) to read as follows:

§ 3280.504 Condensation control and installation of vapor retarders.

(a) * * *

(1) In U_o Value Zones 2 and 3, ceilings must have a vapor retarder with a permeance of not greater than 1 perm as measured by ASTM E96/E96M (incorporated by reference, see § 3280.4), installed on the living space side of the roof cavity.

* * * * *

(c) *Liquid applied vapor retarders*. Each liquid applied vapor retarder must be tested by a nationally recognized testing agency for use on the specific substrate to which it is applied. The test report must include the perm rating, as measured by ASTM E96/E96M (incorporated by reference, see § 3280.4), and associated application rate for each specific substrate.

* * * * *

■ 26. Amend § 3280.510 by revising the first sentence of the introductory text to read as follows:

§ 3280.510 Heat loss certificate.

The manufactured home manufacturer must permanently affix

the following “Certificate” to an interior surface of each dwelling unit that is readily visible to the occupant. * * *

* * * * *

■ 27. Amend § 3280.511 by revising the first sentence of paragraph (a) introductory text and paragraph (b) to read as follows:

§ 3280.511 Comfort cooling certificate and information.

(a) The manufactured home manufacturer must permanently affix a “Comfort Cooling Certificate” to an interior surface of each dwelling unit that is readily visible to the occupant. * * *

* * * * *

(b) For each home designated as suitable for central air conditioning the manufacturer shall provide the maximum central manufactured home air conditioning capacity certified in accordance with the ANSI/AHRI Standard 210/240 with Addenda 1 and 2 (incorporated by reference, see § 3280.4) and in accordance with § 3280.715(a)(3). If the capacity information provided is based on entrances to the air supply duct at other than the furnace plenum, the manufacturer shall indicate the correct supply air entrance and return air exit locations.

* * * * *

■ 28. Amend § 3280.603 by revising paragraph (b)(4)(ii) to read as follows:

§ 3280.603 General requirements.

* * * * *

(b) * * *

(4) * * *

(ii) A statement in the installation instructions required by § 3280.306(b), stating that if the heat tape or pipe heating cable is used, it must be listed or certified for its intended purpose.

* * * * *

■ 29. Revise and republish § 3280.604 to read as follows:

§ 3280.604 Materials.

(a) *Minimum standards.* Materials, devices, fixtures, fittings, equipment, appliances, appurtenances and accessories shall conform to one of the standards listed in this section (all incorporated by reference, see § 3280.4) and be free from defects. Where an appropriate standard is not listed in this section or a standard not listed is preferred, the item may be used if it is listed. A listing is also required when so specified in other sections of this subpart.

(b) *Compliance when there is more than one listed standard.* Where more than one standard is referenced for a

particular material or component, compliance with only one of those standards is acceptable. Exceptions:

(1) When one of the reference standards requires evaluation of chemical, toxicity or odor properties which are not included in the other standard, then conformance to the applicable requirements of each standard shall be demonstrated; or

(2) When a plastic material or component is not covered by the standards in this section, it must be certified as non-toxic in accordance with Drinking water system components-Health effects—ANSI/NSF 61 (incorporated by reference, see § 3280.4).

(c) *List of standards.* Standards for some of the generally used materials and methods of construction are listed as following:

(1) *Ferrous pipe and fittings.* (i) Gray Iron Threaded Fittings—ANSI/ASME B16.4.

(ii) Malleable Iron Threaded Fittings—ANSI/ASME B16.3.

(iii) Material and Property Standard for Special Cast Iron Fittings—IAPMO PS 5.

(iv) Welded and Seamless Wrought Steel Pipe—ANSI/ASME B36.10.

(v) Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless—ASTM A53/A53M.

(vi) Pipe Threads, General Purpose (Inch)—ANSI/ASME B1.20.1.

(vii) Standard Specification for Cast Iron Soil Pipe and Fittings—ASTM A74.

(viii) Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications—CISPI—301.

(2) *Nonferrous pipe and fittings.* (i) Standard Specification for Seamless Copper Pipe, Standard Sizes—ASTM B42.

(ii) Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube—ASTM B251.

(iii) Standard Specification for Seamless Copper Water Tube—ASTM B88.

(iv) Standard Specification for Copper Drainage Tube (DWV)—ASTM B306.

(v) Wrought-Copper and Copper Alloy Solder-Joint Pressure Fitting—ASME/ANSI B16.22.

(vi) Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings-DWV—ASME/ANSI B16.29.

(vii) Cast Copper Alloy Solder-Joint Pressure Fittings—ANSI B16.18.

(viii) Cast Copper Alloy Solder-Joint Drainage Fittings-DWV—ASME B16.23.

(ix) Cast Copper Alloy Fittings for Flared Copper Tubes—ASME/ANSI B16.26.

(x) Standard Specification for Seamless Red Brass Pipe, Standard Sizes—ASTM B43.

(xi) Cast Bronze Threaded Fittings, Classes 125 and 250—ANSI/ASME B16.15.

(3) *Plastic pipe and fittings.* (i) Standard Specification Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40 Plastic Drain, Waste, and Vent Pipe and Fittings—ASTM D2661.

(ii) Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings—ASTM D2665.

(iii) Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fittings Patterns—ASTM D3311.

(iv) Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Schedule 40, Plastic Drain, Waste, and Vent Pipe with a Cellular Core—ASTM F628.

(v) Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot- and Cold-Water Distribution Systems—ASTM D2846.

(vi) Standard Specification for Polybutylene (PB) Plastic Hot- and Cold-Water Distribution Systems—ASTM D3309.

(vii) Plastic Piping Components and Related Materials—ANSI/NSF 14.

(viii) Standard Specification for Crosslinked Polyethylene (PEX) Tubing—ASTM F876.

(ix) Standard Specification for Crosslinked Polyethylene (PEX) Plastic Hot- and Cold-Water Distribution Systems—ASTM F877.

(4) *Miscellaneous.* (i) Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings, ASTM C564.

(ii) Backflow Valves—ANSI A112.14.1.

(iii) Plumbing Fixture Setting Compound—TTP 1536A.

(iv) Material and Property Standard for Cast Brass and Tubing P-Traps—IAPMO PS 2.

(v) Relief Valves for Hot Water Supply Systems—ANSI Z21.22.

(vi) Standard Specification for Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings—ASTM D2235.

(vii) Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems—ASTM D2564.

(viii) Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings—CISPI-HSN.

(ix) Plumbing System Components for Manufactured Homes and Recreational Vehicles—ANSI/NSF 24.

(x) Material and Property Standard for Diversion Tees and Twin Waste Elbow—IAPMO PS 9.

(xi) Material and Property Standard for Flexible Metallic Water Connectors—IAPMO PS 14.

(xii) Material and Property Standard for Dishwasher Drain Airgaps—IAPMO PS 23.

(xiii) Material and Property Standards for Backflow Prevention Assemblies—IAPMO PS 31.

(xiv) Performance Requirements for Air Admittance Valves for Plumbing Drainage Systems, Fixture and Branch Devices—ASSE 1051.

(xv) Drinking Water System Components—Health Effects—ANSI/NSF 61.

(5) *Plumbing fixtures.* (i) Plumbing Fixtures (General Specifications)—FS WW-P-541E/GEN.

(ii) Vitreous China Plumbing Fixtures—ANSI/ASME A112.19.2(M).

(iii) Enameled Cast Iron Plumbing Fixtures—ANSI/ASME A112.19.1M.

(iv) Porcelain Enameled Formed Steel Plumbing Fixtures—ANSI/ASME A112.19.4(M).

(v) Plastic Bathtub Units with Addenda Z124.1a and Z124.1b—ANSI Z124.1.

(vi) Standard for Porcelain Enameled Formed Steel Plumbing Fixtures—IAPMO TSC 22.

(vii) Plastic Shower Receptors and Shower Stalls with Addendum Z124.2a—ANSI Z124.2.

(viii) Stainless Steel Plumbing Fixtures (Designed for Residential Use)—ANSI/ASME A112.19.3M.

(ix) Material and Property Standard for Drains for Prefabricated and Precast Showers—IAPMO PS 4.

(x) Plastic Lavatories with Addendum Z124.3a—ANSI Z124.3.

(xi) Standard for Safety Glazing Materials used in Buildings—Safety Performance Specifications and Methods of Test—ANSI Z97.1.

(xii) Water Heater Relief Valve Drain Tubes—ASME A112.4.1.

(xiii) Flexible Water Connectors—ASME A112.18.6.

(xiv) Performance Requirements for Backflow Protection Devices and Systems in Plumbing Fixture Fittings—ASME A112.18.3M.

(xv) Non-Vitreous Ceramic Plumbing Fixtures—ASME A112.19.9M.

(xvi) Dual Flush Devices for Water Closets—ASME A119.19.10.

(xvii) Deck Mounted Bath/Shower Transfer Valves with Integral Backflow Protection—ASME A112.18.7.

(xviii) Plastic Fittings for Connecting Water Closets to the Sanitary Drainage System—ASME A112.4.3.

(xix) Hydraulic Performance Requirements for Water Closets and Urinals—ASME A112.19.6.

(xx) Plumbing Fixture Fittings—ASME/ANSI A112.18.1M.

(xxi) Trim for Water Closet, Bowls, Tanks, and Urinals—ANSI A112.19.5.

(xxii) Plastic Water Closets, Bowls, and Tanks with Addenda Z124.4a—ANSI Z124.4.

(xxiii) Plastic Toilet (Water Closets) Seats—ANSI Z124.5.

(xxiv) Prefabricated Plastic Spa Shells—ANSI Z124.7.

(xxv) Whirlpool Bathtub Appliances—ASME/ANSI A112.19.7M.

(xxvi) Plastic Urinal Fixtures—ANSI Z-124.9.

(xxvii) Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations—ASSE 1016.

(xxviii) Performance Requirements for Pressurized Flushing Devices (Flushometers) for Plumbing Fixtures—ASSE 1037.

(xxix) Performance Requirements for Water Closet Flush Tank Fill Valves (Ballcocks)—ASSE 1002.

(xxx) Performance Requirements for Hand-held Showers—ASSE 1014.

(xxxi) Hydrants for Utility and Maintenance Use—ANSI/ASME A112.21.3M.

(xxxii) Performance Requirements for Home Laundry Equipment—ASSE 1007.

(xxxiii) Performance Requirements for Hot Water Dispensers, Household Storage Type Electrical—ASSE 1023.

(xxxiv) Plumbing Requirements for Residential Use (Household) Dishwashers—ASSE 1006.

(xxxv) Performance Requirements for Household Food Waste Disposer Units—ASSE 1008.

(xxxvi) Performance Requirements for Temperature Activated Mixing Valves for Primary Domestic Use—ASSE 1017.

(xxxv) Water Hammer Arresters—ANSI A112.26.1.

(xxxvi) Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances—ASME/ANSI A112.19.8M.

(xxxvii) Air Gaps in Plumbing Systems—ASME A112.1.2.

(xxxviii) Performance Requirements for Diverters for Plumbing Faucets with Hose Spray, Anti-Siphon Type, Residential Applications—ASSE 1025.

(xxxix) Performance Requirements for Pipe Applied Atmospheric Type Vacuum Breakers—ASSE 1001.

(xl) Performance Requirements for Hose Connection Vacuum Breakers—ASSE 1011.

(xli) Performance Requirements for Wall Hydrants, Frost Proof Automatic Draining, Anti-Backflow Types—ANSI/ASSE 1019.

(xlii) Performance Requirements for Automatic Compensating Values for Individual Shower and Tub/Shower Combinations—ASSE 1016.

(xliii) Performance Requirements for Water Temperature Limiting Devices—ASSE 1070.

■ 30. Amend § 3280.607 by revising paragraphs (b)(3) and (c)(6)(iv) to read as follows:

§ 3280.607 Plumbing fixtures.

* * * * *

(b) * * *

(3) *Shower compartment.* (i) Each compartment stall must be provided with an approved watertight receptor with sides and back extending with sides and back extending at least 1 inch above the finished dam or threshold. Except as provided by paragraph (b)(3)(v) of this section, the depth of a shower receptor must not be less than 2 inches or more than 9 inches measured from the top of the finished dam or threshold to the top of the drain. The wall area must be constructed of smooth, non-corrosive, and non-absorbent materials to a height not less than 6 feet above the bathroom floor level. Such walls must form a watertight joint with each other and with the bathtub, receptor or shower floor. The floor or compartment must slope uniformly to the drain not less than one-fourth nor more than ½ inch per foot.

(ii) The joint around the drain connection shall be made watertight by a flange, clamping ring, or other approved listed means.

(iii) Shower doors and tub and shower enclosures must be constructed so as to be waterproof and, if glazed, glazing must comply with ANSI Z97.1 (incorporated by reference, see § 3280.4)

(iv) Prefabricated plumbing fixtures shall be approved or listed.

(v) Thresholds in roll-in-type shower compartments must be ½ inch maximum in height in accordance with paragraph (b)(3)(vi) of this section. In transfer type shower compartments, thresholds ½ inch maximum in height must be beveled, rounded, or be vertical.

(vi) Changes in level of ¼ inch maximum in height must be permitted to be vertical. Changes in level greater than ¼ inch in height and not more than ½ inch maximum in height must be beveled with a slope not steeper than 1:2.

(vii) Shower and tub-shower combination valves must be balanced pressure, thermostatic, or combination mixing valves that conform to the requirements of ASSE 1016 (incorporated by reference, see § 3280.4). Such valves must be equipped

with handle position stops that are adjustable in accordance with the valve manufacturer's instructions and to a maximum setting of 120 °F. Hot water supplied to bathtubs and whirlpool bathtubs are to be limited to a temperature of not greater than 120 °F by a water temperature limiting device that conforms to the requirements of ASSE 1070 (incorporated by reference, see § 3280.4).

* * * * *

(c) * * *

(6) * * *

(iv) *Electrical*. Wiring must comply with Articles 680.70, 680.71, and 680.72 of NFPA 70 (incorporated by reference, see § 3280.4).

■ 31. Amend § 3280.609 by revising paragraph (a)(2) to read as follows:

§ 3280.609 Water distribution systems.

(a) * * *

(2) *Hot water supply*. Each dwelling unit equipped with a kitchen sink, and bathtub and/or shower must be provided with a hot water supply system including a listed water heater.

* * * * *

■ 32. Amend § 3280.611 by revising paragraph (c)(5) to read as follows:

§ 3280.611 Vents and venting.

* * * * *

(c) * * *

(5) The distance of the fixture trap from the vent must not exceed the values given in the following table:

TABLE 1 TO PARAGRAPH (c)(5)—MAXIMUM DISTANCE OF FIXTURES FROM VENT TRAP

Size of fixture drain (inches)	Distance trap to vent
1¼	5 ft.
1½	6 ft.
2	8 ft.
3	12 ft.

* * * * *

■ 33. Amend § 3280.702 by revising the definitions for “Class 0 air ducts and air connectors” and “Class 1 air ducts and air connectors” to read as follows:

§ 3280.702 Definitions.

* * * * *

Class 0 air ducts and air connectors means air ducts and air connectors having a fire hazard classification of zero when tested in accordance with UL 181 (incorporated by reference, see § 3280.4).

Class 1 air ducts and air connectors means air ducts and air connectors having a flame spread rating of not over 25 without evidence of continued

progressive combustion and a smoke developed rating of not over 50 when tested in accordance with UL 181 (incorporated by reference, see § 3280.4).

* * * * *

■ 34. Revise § 3280.703 to read as follows:

§ 3280.703 Minimum standards.

Heating, cooling, and fuel burning appliances and systems in manufactured homes shall be free of defects and shall conform to applicable standards (incorporated by reference, see § 3280.4) in this section unless otherwise specified in this part. When more than one standard is referenced, compliance with any one such standard shall meet the requirements of this part.

(a) *Appliances*. (1) Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles—UL 307A.

(2) Fixed and Location-Dedicated Electric Room Heaters—UL 2021.

(3) Electric Baseboard Heating Equipment—UL 1042.

(4) Electric Central Air Heating Equipment—UL 1096.

(5) Gas-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles—UL 307B.

(6) Gas Clothes Dryers Volume I, Type 1 Clothes Dryers—ANSI Z21.5.1 (CSA Group).

(7) Gas-fired Water Heaters, Volume III, Storage Water Heaters with Input Ratings Above 75,000 BTU per Hour, Circulating and Instantaneous—ANSI Z21.10.3 (CSA Group).

(8) Gas-Fired, Heat Activated Air Conditioning and Heat Pump Appliances—ANSI Z21.40.1 (CSA Group).

(9) Gas-Fired Central Furnaces (Except Direct Vent Systems)—ANSI Z21.47 (CSA Group).

(10) Connectors for Outdoor Gas Appliances and Manufactured Homes—ANSI Z21.75 (CSA Group).

(11) Decorative Gas Appliances for Installation in Solid Fuel Burning Fireplaces—RADCO DS-010.

(12) Household Cooking Gas Appliances—ANSI Z21.1 (CSA Group).

(13) Refrigerators Using Gas Fuel—ANSI Z21.19 (CSA Group).

(14) Gas Water Heaters, Volume I, Storage Water Heaters with Input Ratings of 75,000 BTU per hour or Less—ANSI Z21.10.1 (CSA Group).

(15) Household Electric Storage Tank Water Heaters—UL 174.

(16) Household and Similar Electrical Appliances—Part 2-40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers—UL 60335-2-40.

(17) Smoke Detectors for Fire Protective Signaling Systems—UL 268.

(18) Single and Multiple Station Carbon Monoxide Alarms—UL 2034.

(19) Electric Heating Appliances—UL 499.

(b) *Ferrous pipe and fittings*. (1) Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless—ASTM A53/A53M.

(2) Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines—ASTM A539.

(3) Pipe Threads, General Purpose (Inch)—ANSI/ASME B1.20.1.

(4) Welding and Seamless Wrought Steel Pipe—ANSI/ASME B36.10.

(c) *Nonferrous pipe, tubing, and fittings*. (1) Standard Specification for Seamless Copper Water Tube—ASTM B88.

(2) Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service—ASTM B280.

(3) Connectors for Gas Appliances—ANSI Z21.24 (CSA Group).

(4) Manually Operated Gas Valves for Appliances, Appliance Connector Valves and Hose End Valves—ANSI Z21.15 (CSA Group).

(5) Standard for Gas Supply Connectors for Manufactured Homes—IAPMO TS 9.

(6) Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tube—ASTM B251.

(7) Standard Specification for Seamless Copper Pipe, Standard Sizes—ASTM B42.

(d) *Miscellaneous*. (1) Factory-Made Air Ducts and Air Connectors—UL 181.

(2) Closure Systems for use with Rigid Air Ducts and Air Connectors—UL 181A.

(3) Closure Systems for use with Flexible Air Ducts and Air Connectors—UL 181B.

(4) Safety Glazing Materials Used in Buildings—Safety Performance Specifications and Methods of Test—ANSI Z97.1.

(5) Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use—UL 109.

(6) Pigtails and Flexible Hose Connectors for LP-Gas—UL 569.

(7) Roof Jacks for Manufactured Homes and Recreational Vehicles—UL 311.

(8) Relief Valves for Hot Water Supply Systems—ANSI Z21.22.

(9) Automatic electrical controls for household and similar use—Part 2-5: Particular requirements for automatic electrical burner control systems—ANSI Z21.20 (CSA Group).

(10) Automatic Valves for Gas Appliances—ANSI Z21.21 (CSA Group).

(11) Gas Appliance Thermostats—ANSI Z21.23 (CSA Group).

(12) Gas Vents—UL 441.

(13) Installation of Oil-Burning Equipment—NFPA 31.

(14) National Fuel Gas Code—NFPA 54/ANSI Z223.1.

(15) Warm Air Heating and Air Conditioning Systems—NFPA 90B.

(16) Liquefied Petroleum Gases Code—NFPA 58.

(17) Flares for Tubing—SAE J533.

(18) Factory Built Chimneys for Residential Type and Building Heating Appliances—UL 103.

(19) Factory-Built Fireplaces—UL 127.

(20) Solid-Fuel Type Room Heaters—UL 1482.

(21) Fireplace Stoves—UL 737.

(22) Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment—ANSI/AHRI Standard 210/240 with Addenda 1 and 2.

(23) Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings—ANSI/ASHRAE 62.2.

(24) Requirements for Gas Connectors for Connection of Fixed Appliances for Outdoor Installation, Park Trailers, and Manufactured (Mobile) Homes to the Gas Supply—AGA No. 3.

■ 35. Amend § 3280.705 by revising paragraphs (b)(1), (3), and (5), (c)(2), (e), (f), (j), (l)(1), (l)(2)(ii), and (l)(3) to read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with ASME B36.10 (incorporated by reference, see § 3280.4). Threaded brass pipe in iron pipe sizes may be used. Threaded brass pipe shall comply with ASTM B43. (incorporated by reference, see § 3280.4).

* * * * *

(3) Copper tubing must be annealed type, Grade K or L, conforming to ASTM B88 (incorporated by reference, see § 3280.4), or must comply with the ASTM B280 (incorporated by reference, see § 3280.4). Copper tubing must be internally tinned.

* * * * *

(5) Corrugated stainless steel tubing (CSST) systems must be listed and installed in accordance with ANSI LC 1 (CSA Group; incorporated by reference, see § 3280.4), and the requirements of this section.

(c) * * *

(2) The connection(s) between units must be made with a connector(s) listed for exterior use or direct plumbing sized in accordance with paragraph (d) of this section. A shutoff valve of the non-displaceable rotor type conforming to ANSI Z21.15 (CSA Group; incorporated by reference, see § 3280.4), suitable for outdoor use must be installed at each crossover point upstream of the connection.

* * * * *

(e) *Joints for gas pipe.* All pipe joints in the piping system, unless welded or brazed, shall be threaded joints that comply with ANSI/ASME B1.20.1 (incorporated by reference, see § 3280.4). Right and left nipples or couplings shall not be used. Unions, if used, shall be of ground joint type. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000 °F.

(f) *Joints for tubing.* (1) Tubing joints shall be made with either a single or a double flare of 45 degrees in accordance with SAE J533 (incorporated by reference, see § 3280.4) or with other listed vibration-resistant fittings, or joints may be brazed with material having a melting point exceeding 1,000 °F. Metallic ball sleeve compression-type tubing fittings shall not be used.

(2) Steel tubing joints shall be made with a double-flare in accordance with SAE J533 (incorporated by reference, see § 3280.4).

* * * * *

(j) *Gas supply connection.* When gas appliances are installed, at least one gas supply connection must be provided on each dwelling unit. The connection must not be located beneath an exit door. Where more than one connection is provided, the piping system must be sized to provide adequate capacity from each supply connection.

* * * * *

(l) * * *

(1) *General.* A listed LP-Gas flexible connection conforming to UL 569 (incorporated by reference, see § 3280.4), or equal, must be supplied when LP-Gas cylinder(s) and regulator(s) are supplied.

(2) * * *

(ii) The outlet must be provided with an approved quick-disconnect device, which must be designed to provide a positive seal on the supply side of the gas system when the appliance is disconnected. A shutoff valve of the non-displaceable rotor type conforming to ANSI Z21.15 (CSA Group; incorporated by reference, see § 3280.4), must be installed immediately upstream of the quick-disconnect device. The

complete device must be provided as part of the original installation.

* * * * *

(3) *Valves.* A shutoff valve must be installed in the fuel piping at each appliance inside the dwelling unit structure or connector in addition to any valve on the appliance and so arranged to be accessible to permit servicing of the appliance and removal of its components. The shutoff valve must be located within 6 feet of any cooking appliance and within 3 feet of any other appliance. A shutoff valve may serve more than one appliance if located as required by this paragraph (l)(3). The shutoff valve must be of the non-displaceable rotor type and conform to ANSI Z21.15 (CSA Group; incorporated by reference, see § 3280.4).

* * * * *

■ 36. Amend § 3280.706 by revising paragraphs (b)(1) and (3), and (d) to read as follows:

§ 3280.706 Oil piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with ANSI/ASME B36.10 (incorporated by reference, see § 3280.4). Threaded copper or brass pipe in iron pipe sizes may be used.

* * * * *

(3) Copper tubing must be annealed type, Grade K or L conforming to ASTM B88 (incorporated by reference, see § 3280.4), or shall comply with ASTM B280 (incorporated by reference, see § 3280.4).

* * * * *

(d) *Joints for oil piping.* All pipe joints in the piping system, unless welded or brazed, shall be threaded joints which comply with ANSI/ASME B1.20.1 (incorporated by reference, see § 3280.4). The material used for brazing pipe connections shall have a melting temperature in excess of 1,000 °F.

* * * * *

■ 37. Amend § 3280.707 by revising paragraphs (a) introductory text, (d)(2), and (f) introductory text to read as follows:

§ 3280.707 Heat producing appliances.

(a) Heat producing appliances and vents, roof jacks and chimneys necessary for their installation in manufactured homes must be listed or certified for residential use by a nationally recognized testing agency.

* * * * *

(d) * * *

(2) All gas and oil-fired automatic storage water heaters shall have a recovery efficiency, E, and a standby

loss, S, as described below. The method of test of E and S shall be as described in section 2.7 of Gas Water heaters, Vol. I, Storage Water Heaters with Input/

Ratings of 75,000 BTU per hour or less, ANSI Z21.10.1 (CSA Group; incorporated by reference, see § 3280.4), except that for oil-fired units. CF = 1.0,

Q = total gallons of oil consumed and H = total heating value of oil in BTU/gallon.

TABLE 1 TO PARAGRAPH (d)(2)

Storage capacity in gallons	Recovery efficiency	Standby loss
Less than 25	At least 75 percent	Not more than 7.5 percent.
25 up to 35	00	Not more than 7 percent.
35 or more	00	Not more than 6 percent.

* * * * *

(f) *Oil-fired heating equipment.* All oil-fired heating equipment must conform to UL 307A (incorporated by reference, see § 3280.4) and be installed in accordance with NFPA 31 (incorporated by reference, see § 3280.4). Regardless of the requirements of the above-referenced standards, or any other standards referenced in this part, the following are not required:

* * * * *

■ 38. Amend § 3280.709 by

■ a. Revising paragraphs (a) introductory text and (g) introductory text;

■ b. Adding a reserved paragraph (g)(2); and

■ c. Revising paragraph (h).

The revisions and addition read as follows:

§ 3280.709 Installation of appliances.

(a) The installation of each appliance must conform to the terms of its listing and the manufacturer's instructions. Every appliance must be secured in place to avoid displacement. For the purpose of servicing and replacement, each appliance must be both accessible and removable.

* * * * *

(g) Solid fuel burning fireplaces and fireplace stoves listed for residential use may be installed in manufactured homes provided they and their installation conform to paragraphs (g)(1)(i) through (vii) of this section. A fireplace or fireplace stove is not to be considered as a heating facility for determining compliance with subpart F of this part.

* * * * *

(h) A corrosion-resistant water drip collection and drain pan must be installed under each storage tank-type water heater or a hot water storage tank that will allow water leaking from the water heater to drain to the exterior of the manufactured home, or to a drain.

■ 39. Revise § 3280.711 to read as follows:

§ 3280.711 Instructions.

Operating instructions for each appliance must be provided with the homeowner's manual. An additional copy of the operating instructions must be provided with each appliance unless the appliance is affixed with a permanent Quick Response (QR) Code.

■ 40. Amend § 3280.714 by revising paragraphs (a)(1) and (2) to read as follows:

§ 3280.714 Appliances, cooling.

(a) * * *

(1) Mechanical air conditioners shall be rated in accordance with the ANSI/AHRI Standard 210/240 with Addenda 1 and 2 (incorporated by reference, see § 3280.4) and certified by AHRI or other nationally recognized testing agency capable of providing follow-up service.

(i) Electric motor-driven unitary air-cooled air conditioners and heat pumps in the cooling mode with rated capacity less than 65,000 BTU/hour (19,045 watts), when rated at AHRI standard rating conditions in ANSI/AHRI Standard 210/240 with Addenda 1 and 2 (incorporated by reference, see § 3280.4), must have seasonal energy efficiency (SEER) values not less than as specified in 10 CFR part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards.

(ii) Heat pumps must be certified to comply with all requirements of the ANSI/AHRI Standard 210/240 with Addenda 1 and 2 (incorporated by reference, see § 3280.4). Electric motor-driven vapor compression heat pumps with supplemental electrical resistance heat must be sized to provide by compression at least 60 percent of the calculated annual heating requirements for the manufactured home being served. A control must be provided and set to prevent operation of supplemental electrical resistance heat at outdoor temperatures above 40 °F (4 °C), except for defrost conditions. Electric motor-driven vapor compression heat pumps with supplemental electric resistance heat conforming to ANSI/AHRI

Standard 210/240 with Addenda 1 and 2, must have Heating Season Performance Factor (HSPF) efficiencies not less than as specified in the 10 CFR part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards.

(iii) Electric motor-driven vapor compression heat pumps with supplemental electric resistance heat conforming to ANSI/AHRI Standard 210/240 with Addenda 1 and 2 (incorporated by reference, see § 3280.4), shall show coefficient of performance ratios not less than shown below:

TABLE 1 TO PARAGRAPH (a)(1)(iii)—COP

Temperature degrees Fahrenheit	Coefficient of performance
47	2.5
17	1.7
0	1.0

(2) Gas fired absorption air conditioners must be listed or certified in accordance with ANSI Z21.40.1, (CSA Group; incorporated by reference, see § 3280.4), and certified by a nationally recognized testing agency capable of providing follow-up service.

* * * * *

■ 41. Amend § 3280.715 by revising paragraphs (a)(1), (c), and (e) introductory text to read as follows:

§ 3280.715 Circulating air systems.

(a) * * *

(1) Supply air ducts, fittings, and any dampers contained there-in must be made of galvanized steel, tin-plated steel, or aluminum, or must be listed as Class 0 or Class 1 air ducts in accordance with UL 181 (incorporated by reference, see § 3280.4). Air ducts and air connectors located within three feet of the furnace discharge must be rated to withstand the maximum air discharge temperature of the equipment. Air connectors must not be used for exterior manufactured home duct connections. A duct system integral

with the structure must be of durable construction that can be demonstrated to be equally resistant to fire and

deterioration as required by this section. Ducts constructed of sheet metal must

be in accordance with the following table:

TABLE 1 TO PARAGRAPH (a)(1)—MINIMUM METAL THICKNESS FOR DUCTS ¹

Duct type	Diameter 14 in. or less	Width over 14 in.
Round	0.013	0.016
Enclosed rectangular	0.013	0.016
Exposed rectangular	0.016	0.019

¹ When “nominal” thickness are specified, 0.003 in. shall be added to these “minimum” metal thicknesses.

* * * * *

(c) *Joints and seams.* Joints and seams of sheet metal and factory-made flexible ducts, including trunks, branches, risers, crossover ducts, and crossover duct plenums, shall be mechanically secured and made substantially airtight. Slip joints in sheet metal ducts shall have a lap of at least one inch (1”) and shall be mechanically fastened. Tapes or caulking compounds shall be permitted to be used for sealing mechanically secure joints. Sealants and tapes shall be applied only to surfaces that are dry and dust-, dirt-, oil-, and grease-free. Tapes and mastic closure systems for use with factory-made rigid fiberglass air ducts and air connectors shall be listed in accordance with UL 181A (incorporated by reference, see § 3280.4). Tapes and mastic closure systems used with factory-made flexible air ducts and air connectors shall be listed in accordance with UL 181B (incorporated by reference, see § 3280.4).

* * * * *

(e) *Registers and grilles.* Fittings connecting the registers and grilles to the duct system must be constructed of metal or material that complies with the requirements of Class 1 or 2 ducts under UL 181 (incorporated by reference, see § 3280.4). Air supply terminal devices (registers) when installed in kitchen, bedrooms, and bathrooms must be equipped with adjustable closeable dampers. Registers or grilles must be constructed of metal or conform with the following:

* * * * *

■ 42. Amend § 3280.801 by revising paragraphs (a) and (b) to read as follows:

§ 3280.801 Scope.

(a) This subpart I incorporates by reference NFPA 70 (incorporated by reference, see § 3280.4) including Part II of Article 550 of NFPA 70, and covers the electrical conductors and equipment installed within or on manufactured homes and the conductors that connect manufactured homes to a supply of electricity. However, Articles 550.4(A)

and 550.4(B) of NFPA 70 shall not apply.

(b) In addition to the requirements of this part and Part II of Article 550 of NFPA 70, the applicable portions of other Articles of NFPA 70 referenced in this part must be followed for electrical installations in manufactured homes. The use of arc-fault breakers under the NFPA 70, are only required for general lighting circuits. Smoke alarms installed on a dedicated circuit do not require arc fault protection. Wherever arc-fault breakers are provided, such use must be in accordance with NFPA 70. Wherever the requirements of these standards differ from NFPA 70, these standards apply.

* * * * *

■ 43. Amend § 3280.802 by revising paragraph (a)(21) to read as follows:

§ 3280.802 Definitions.

(a) * * *

(21) *Feeder assembly* means the overhead or under-chassis feeder conductors, including the grounding conductor, together with the necessary fittings and equipment, or a power supply cord approved for manufactured home use, designed for the purpose of delivering energy from the source of electrical supply to the distribution panelboard within each dwelling unit.

* * * * *

■ 44. Amend § 3280.803 by revising paragraphs (a) and (k)(1) and (3) to read as follows:

§ 3280.803 Power supply.

(a) The power supply to the manufactured home must be a feeder assembly consisting of not more than one listed 50 ampere manufactured home power supply cord, or a permanently installed circuit. A manufactured home that is factory equipped with gas or oil-fired heating equipment and cooking appliances is permitted to be provided with a listed power supply cord rated 40 amperes. This section does not apply to multi-dwelling unit manufactured homes.

* * * * *

(k) * * *

(1) One mast weatherhead installation installed in accordance with Article 230 of NFPA 70 (incorporated by reference, see § 3280.4), containing four continuous insulated, color-coded, feeder conductors, one of which shall be an equipment grounding conductor; or

* * * * *

(3) Service equipment installed in or on the manufactured home, provided that all of the following conditions are met:

(i) In its written installation instructions, the manufacturer must include information indicating that the home must be secured in place by an anchoring system or installed on and secured to a permanent foundation;

(ii) The installation of the service equipment complies with Article 230 of NFPA 70 (incorporated by reference, see § 3280.4). Exterior service equipment or the enclosure in which it is to be installed must be weatherproof, and conductors must be suitable for use in wet locations;

(iii) Bonding and grounding of the service must be in accordance with Article 250 of NFPA 70 (incorporated by reference, see § 3280.4);

(iv) The manufacturer must include in its installation instructions one method of grounding the service equipment at the installation site. The instructions must clearly state that other methods of grounding are found in Article 250 of NFPA 70;

(v) The minimum size grounding electrode conductor must be specified in the instructions; and

(vi) A red warning label must be mounted on or adjacent to the service equipment. The label must state the following: WARNING—DO NOT PROVIDE ELECTRICAL POWER UNTIL THE GROUNDING ELECTRODE(S) IS INSTALLED AND CONNECTED (SEE INSTALLATION INSTRUCTIONS).

■ 45. Amend § 3280.804 by:

■ a. Revising paragraphs (a) and (c);

■ b. Revising paragraph (g) introductory text;

■ c. Adding reserved paragraph (g)(2);

- c. Revising paragraph (k); and
- d. Adding paragraph (m).

The revisions and additions read as follows:

§ 3280.804 Disconnecting means and branch-circuit protective equipment.

(a) The branch-circuit equipment is permitted to be combined with the disconnecting means as a single assembly. Such a combination is permitted to be designated as a distribution panelboard. If a fused distribution panelboard is used, the maximum fuse size for the mains shall be plainly marked, with the lettering at least ¼ inch high and visible when fuses are changed. See Article 110.22 of NFPA 70 (incorporated by reference, see § 3280.4), concerning the identification of each disconnecting means and each service, feeder, or branch circuit at the point where it originated, and the type of marking needed.

* * * * *

(c) A single disconnecting means must be provided in each dwelling unit, consisting of a circuit breaker, or a switch and fuses and its accessories, installed in a readily accessible location near the point of entrance of the supply cord or conductors into the dwelling unit.

* * * * *

(g) Branch-circuit distribution equipment must be installed in each dwelling unit and must include overcurrent protection for each branch circuit consisting of either circuit breakers or fuses.

* * * * *

(k) When a home is provided with installed service equipment, a single disconnecting means for disconnecting the branch circuit conductors from the service entrance conductors must be provided in accordance with Article 230, Part VI of NFPA 70 (incorporated by reference, see § 3280.4). The disconnecting means shall be listed for use as service equipment. The disconnecting means may be combined with the disconnect required by paragraph (c) of this section. The disconnecting means shall be rated not more than the ampere supply or service capacity indicated on the tag required by paragraph (l) of this section.

* * * * *

(m) A service distribution panel must be factory installed and connected to the subpanels on multi-dwelling unit manufactured homes.

■ 46. Amend § 3280.805 by revising paragraphs (a)(1) and (a)(3)(iv) to read as follows:

§ 3280.805 Branch circuits required.

(a) * * *

(1) *Lighting.* For lighting, the number of 15 or 20 ampere lighting circuits is based on a 3 volt-amperes per square foot times the outside dimensions of each story of each dwelling unit (coupler excluded) divided by 120 volts times the amperes.

Example 1 to Paragraph (a)(1)

of Lighting Circuits = $(3 \times L \times W \times \# \text{ of Stories}) / (120 \times (15 \text{ or } 20))$

* * * * *

(3) * * *

(iv) The rating of the range branch circuit is based on the range demand as specified for ranges in § 3280.811(a)(5). For central air conditioning, see Article 440 of NFPA 70 (incorporated by reference, see § 3280.4).

* * * * *

■ 47. Amend § 3280.806 by revising paragraphs (a)(2) and (d)(8) to read as follows:

§ 3280.806 Receptacle outlets.

(a) * * *

(2) Installed according to Article 406.3 of NFPA 70 (incorporated by reference, see § 3280.4).

* * * * *

(d) * * *

(8) At least one receptacle outlet shall be installed outdoors. Additional outdoor receptacles shall be installed in accordance with Article 210.52(E)(3) of NFPA 70 (incorporated by reference, see § 3280.4), except those balconies, decks, or porches with an area of less than 20 square feet are not required to have an additional receptacle installed.

* * * * *

■ 48. Amend § 3280.807 by revising paragraph (c) to read as follows:

§ 3280.807 Fixtures and appliances.

* * * * *

(c) Where a lighting fixture is installed over a bathtub or in a shower stall, it must be listed for wet locations. See also Article 410.410(D) of NFPA 70 (incorporated by reference, see § 3280.4).

* * * * *

■ 49. Amend § 3280.808 by revising paragraphs (a), (k), (l), and (p) to read as follows:

§ 3280.808 Wiring methods and materials.

(a) Except as specifically permitted by this part, the wiring methods and materials specified in NFPA 70 (incorporated by reference, see § 3280.4) must be used in manufactured homes.

* * * * *

(k) Where outdoor or under-chassis line voltage (120 volts, nominal or higher) wiring is exposed to moisture or subject to physical damage, it must be

protected by a conduit or raceway approved for use in wet locations. The conductors must be suitable for use in wet locations.

(l) Outlet boxes of dimensions less than those required in table 314.16(A) of NFPA 70 (incorporated by reference, see § 3280.4), are permitted provided the box has been tested and approved for that purpose.

* * * * *

(p) A substantial brace for securing a box, fitting, or cabinet must be as described in Article 314.23(B) of NFPA 70 (incorporated by reference, see § 3280.4), or the brace, including the fastening mechanism to attach the brace to the home structure, must withstand a force of 50 lbs. applied to the brace at the intended point(s) of attachment for the box in a direction perpendicular to the surface on which the box is installed.

* * * * *

■ 50. Amend § 3280.810 by revising paragraph (b)(3) to read as follows:

§ 3280.810 Electrical testing.

* * * * *

(b) * * *

(3) Electrical polarity checks to determine that connections have been made in accordance with applicable provisions of these standards and Article 550.17 of NFPA 70 (incorporated by reference, see § 3280.4). Visual verification is an acceptable electrical polarity check.

■ 51. Amend § 3280.811 by revising paragraph (b) introductory text to read as follows:

§ 3280.811 Calculations.

* * * * *

(b) The following is an optional method of calculation for lighting and appliance loads for manufactured homes served by single 3-wire 120/240 volt set of feeder conductors with an ampacity of 100 or greater. The total load for determining the feeder ampacity may be computed in accordance with the following table instead of the method previously specified. Feeder conductors whose demand load is determined by this optional calculation are permitted to have the neutral load determined by Article 220.61 of NFPA 70 (incorporated by reference, see § 3280.4). The loads identified in the table as “other load” and as “Remainder of other load” must include the following:

* * * * *

■ 52. Amend § 3280.1003 by revising paragraph (a)(1) to read as follows:

§ 3280.1003 Attached manufactured home unit separation.

(a) * * *

(1) Attached manufactured homes shall be separated from each other by a fire separation wall of not less than 1-hour fire-resistive rating with exposure from both sides on each attached manufactured home unit when rated based on tests in accordance with ASTM E119 (incorporated by reference, see § 3280.4).

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 53. The authority citation for part 3282 continues to read as follows:

Authority: 15 U.S.C. 2697, 28 U.S.C. 2461 note, 42 U.S.C. 3535(d), 5403, and 5424.

■ 54. Amend § 3282.7 by revising paragraphs (t) and (v) and removing paragraph (oo) to read as follows:

§ 3282.7 Definitions.

* * * * *

(t) *Length of manufactured home* is defined in § 3280.2 of this chapter.

* * * * *

(v) *Manufactured home* is defined in § 3280.2 of this chapter.

* * * * *

§ 3282.8 [Amended]

■ 55. Amend § 3282.8 by removing paragraph (l).

■ 56. Revise § 3282.552 to read as follows:

§ 3282.552 Manufacturer reports for joint monitoring fees.

The manufacturer must submit to the IPIA in each of its manufacturing plants, and to HUD or to the Secretary's agent, a monthly production report that includes the serial numbers of each manufactured home manufactured and labeled at that plant during the preceding month. The report must also include the date of manufacture, State of first location of these manufactured homes after leaving the plant, type of unit, number of dwelling units, and any other information required under this part. For all homes to be completed pursuant to subpart M of this part, the production report must also include a brief description of the work to be completed on site. The State of first location is the State of the premises of the retailer or purchaser to whom the manufactured home is first shipped. The monthly report must be submitted by the 10th day of each month and contain information describing the manufacturer's previous month's

activities. The manufacturer is encouraged to submit the report electronically, when feasible.

PART 3285—MODEL MANUFACTURED HOME INSTALLATION STANDARDS

■ 57. The authority citation for part 3285 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, 5404, and 5424.

■ 58. Amend § 3285.5 by adding, in alphabetical order, definitions for “Peak cap assembly” and “Peak flip assembly” to read as follows:

§ 3285.5 Definitions.

* * * * *

Peak cap assembly means any roof peak assembly that is either shipped loose or site completed and is site installed to finish the roof ridge/peak of a home.

* * * * *

Peak flip assembly means any roof peak assembly that requires the joining of two or more cut top chord members on site. The cut top chords must be joined at the factory by straps, hinges, or other means.

* * * * *

■ 59. Amend § 3285.503 by revising paragraph (b) to read as follows:

§ 3285.503 Optional appliances.

* * * * *

(b) *Fireplaces and wood-stoves.* When not provided by the home manufacturer, fireplaces and wood-stoves must be listed for residential use and must be installed in accordance with their listings.

* * * * *

■ 60. Add § 3285.506 to subpart F to read as follows:

§ 3285.506 Testing and certification for fire sprinkler systems.

The installer shall ensure that a fire protection technician certifies and tests residential fire sprinkler systems on site in accordance with the home manufacturer's instructions and as outlined in § 3280.214 of this chapter. The fire protection technician conducting the required testing should complete and Fire Sprinkler System Certificate so that a required listed minimum water supply is reported as available for the system. The installer will provide the testing requirements specified in § 3280.612(a) of this chapter and maintain a copy of the test report collected from the fire protection technician.

■ 61. Amend § 3285.603 by revising paragraphs (d)(3) and (e)(1) to read as follows:

§ 3285.603 Water supply.

* * * * *

(d) * * *

(3) Only heat tape or pipe heating cable listed and certified for its intended purpose is permitted for use, and it must be installed in accordance with tape or cable manufacturer installation instructions.

(e) * * *

(1) The water system must be inspected and tested for leaks after completion at the site. The installation instructions must provide testing requirements that are in accordance with the piping manufacturer's instructions.

* * * * *

■ 62. Amend § 3285.801 by revising paragraph (f)(2) to read as follows:

§ 3285.801 Exterior close-up.

* * * * *

(f) * * *

(2) In which the roof pitch of the hinged roof is less than 7:12, including designs incorporating peak cap or peak flip assembly components; and

* * * * *

PART 3286—MANUFACTURED HOME INSTALLATION PROGRAM

■ 63. The authority citation for part 3286 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5404, and 5424.

■ 64. Revise § 3286.103 to read as follows:

§ 3286.103 DAPIA-approved installation instructions.

(a) *Providing instructions to purchaser or lessee.* (1) For each manufactured home sold or leased to a purchaser or lessee, the retailer must provide the purchaser or lessee with the manufacturer's DAPIA-approved installation instructions for the home, a copy of which is shipped with the home in accordance with § 3285.2 of this chapter.

(2) If the installation requires a design that is different from that provided by the manufacturer in paragraph (a)(1) of this section, the installation design and instructions must be prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the Federal installation standards in part 3285 of this chapter. The retailer or manufacturer must provide the installation design and instructions to the purchaser or lessee.

(b) *Providing instructions to installer.* When the retailer or manufacturer agrees to provide any set up in connection with the sale of the home, the retailer or manufacturer must provide to the licensed installer a copy of the approved installation instructions required in paragraph (a)(1) or (2) of this section or, as applicable, to each company or, in the case of sole proprietor, to each individual who performs setup or installation work on the home.

■ 65. Amend § 3286.205 by revising paragraph (d) to read as follows:

§ 3286.205 Prerequisites for installation license.

* * * * *

(d) *Insurance and either a surety bond or irrevocable letter of credit.* An applicant for an installation license must provide evidence of and must maintain, when available in the State of installation, insurance and either a surety bond or irrevocable letter of credit that will cover the cost of repairing all damage to the home and its

supports caused by the installer during the installation up to and including replacement of the home. HUD may require the licensed installer to provide proof of the surety bond or insurance at any time. The licensed installer must notify HUD of any changes or cancellations with the insurance coverage, surety bond, or irrevocable letter of credit.

■ 66. Amend § 3286.207 by revising paragraph (d) to read as follows:

§ 3286.207 Process for obtaining installation license.

* * * * *

(d) *Proof of insurance and either a surety bond or irrevocable letter of credit.* Every applicant for an installation license must submit the name and proof of the applicant's insurance carrier and the number of the policy, surety bond, or irrevocable letter of credit required in § 3286.205(d).

* * * * *

■ 67. Amend § 3286.209 by revising paragraph (b)(8)(vi) to read as follows:

§ 3286.209 Denial, suspension, or revocation of installation license.

* * * * *

(b) * * *

(8) * * *

(vi) Failure to maintain the insurance and either a surety bond or irrevocable letter of credit, required by § 3286.205(d).

* * * * *

■ 68. Amend § 3286.409 by revising paragraph (b) to read as follows:

§ 3286.409 Obtaining inspection.

* * * * *

(b) *Contract rights not affected.*

Failure to arrange for an inspection of a home within 10 business days will not affect the validity or enforceability of any sale or contract for the sale of any manufactured home.

* * * * *

Julia Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part IV

Department of Agriculture

Rural Business-Cooperative Service

7 CFR Part 4284

Modernizing Grant Program Regulation; Final Rule

DEPARTMENT OF AGRICULTURE**Rural Business-Cooperative Service****7 CFR Part 4284****[Docket No. RBS-24-BUSINESS-0004]****RIN 0570-AB03****Modernizing Grant Program Regulation****AGENCY:** Rural Business-Cooperative Service, USDA.**ACTION:** Final rule; request for comment.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), an agency of the Rural Development (RD) mission area within the U.S. Department of Agriculture (USDA), is issuing a final rule with comment to implement the provisions of the Agriculture Improvement Act of 2018 related to the Value-Added Producer Grant (VAPG) Program and the Agriculture Innovation Center (AIC) Program and to modernize the Rural Cooperative Development Grant Program (RCDG). In addition, this action will support ways to simplify and streamline RD program delivery by removing outdated and ineffective definitions, requirements, and scoring criteria for the grant programs above.

DATES:

Effective date: This final rule is effective November 15, 2024.

Comment date: Comments must be submitted on or before October 16, 2024.

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking Portal at www.regulations.gov and in the "Search Documents" box, enter the Docket Number or the Regulatory Information Number (RIN) provided above in the headings to this final rule, and click the "Search" button. Locate this document in the displayed list and select the "Comment" button associated with this document. You will be redirected to a comment submission page and can begin typing your comment in the designated box and/or you may also upload a file. Once you have completed the information requested on the page, you will select the "Submit Comment" button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available under the "FAQ" link at the bottom of the Home page.

All submissions received must include the Agency name and docket number or RIN for this rulemaking. All

comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Other Information: Additional information about RD and its programs is available at <https://www.rd.usda.gov/>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

- I. Authority
- II. Background
- III. Stakeholder Engagement
- IV. Summary of Changes to the Rule
 - A. Subpart A—General Requirements for Cooperative Services Grant Programs
 - B. Subpart F—Rural Cooperative Development Grants
 - C. Subpart J—Value-Added Producer Grant Program
 - D. Subpart K—Agriculture Innovation Center Demonstration Program
- V. Executive Orders

I. Authority

(A) The AIC program is authorized by section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (2002 Farm Bill) (7 U.S.C. 1632b), as amended by section 7608 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334) (2018 Farm Bill) (see 7 U.S.C. 1632b).

(B) The RCDG program is authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(e)), as amended by the 2018 Farm Bill (sections 6412-15, 6601(a)(1)(B), 6701(c), (d)(1)).

(C) The VAPG program is authorized under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106-224), as amended by section 10102 of the 2018 Farm Bill (Pub. L. 115-334) (see 7 U.S.C. 1627c).

II. Background

RD is a mission area within USDA comprised of RBCS, the Rural Utilities Service and the Rural Housing Service. RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. RD meets its mission by providing loans, grants, loan guarantees, and technical assistance through a multitude of programs aimed at creating and improving businesses, housing and infrastructure throughout rural America.

This part, 7 CFR part 4284, contains the rules and requirements for four

programs, however, only the following three programs will be affected by this action: (1) RCDG (subpart F—7 CFR 4284.501 through 4284.600), which makes grants to Cooperative Development Centers that then provide technical assistance and business development help to individuals and businesses to start, expand or improve rural cooperatives and other mutually-owned businesses, (2) VAPG (subpart J—7 CFR 4284.901 through 4284.999), which helps agricultural producers enter into value-added activities related to the processing and/or marketing of new products, and (3) AIC (subpart K—7 CFR 4284.1001 through 4284.1100), which makes grants to Agriculture Innovation Centers that then provide services to agricultural producers seeking to develop and/or market value-added agricultural products. Subpart L (7 CFR 4284.1101 through 4284.1131) relates to the Rural Innovation Stronger Economy Grant Program and is not being impacted by this rulemaking.

The Agency has issued a standardized Federal Financial Assistance Agreement to incorporate provisions of 2 CFR part 200 which applies to these grant programs but has not updated the subparts of the regulation that govern the programs in over 16 years other than a March 2016 amendment to subpart J to implement provisions of the Agricultural Act of 2014 (2014 Farm Bill; Pub. L. 113-79) and subpart L that was added in June 2021. Since the Agency must incorporate the provisions outlined in sections 7608 and 10102 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115-334), it is using this rulemaking as an opportunity to update and reorganize subparts F, J and K of this regulation. The updates and reorganizing include modernizing the RCDG and AIC programs, improving processes, streamlining requirements, and providing clarity to the daily administration of the programs. Language in subpart J is being updated in preparation for a new application intake system that is being developed and will streamline the application process once it comes online. After the changes, each subpart will be a standalone set of definitions and requirements for each individual grant program.

III. Stakeholder Engagement

Three Stakeholder Listening Sessions and Requests for Information, specific to each program, were held in the fall of 2021 to obtain the public's input on potential changes to program application processes and requirements. These sessions were announced through

notices published in the **Federal Register** on August 24, 2021. The notices were published at: AIC—86 FR 47286, RCDG—86 FR 47289 and VAPG—86 FR 47284. Each of the notices included the option that the participants could officially submit their comments through *Regulations.gov* until October 25, 2021. The Agency received several written submissions in addition to the oral comments that were considered as they evaluated ways to streamline and improve the requirements outlined in this rulemaking.

The Agency, through discussions with internal and external stakeholders while administering these programs on a daily basis, has received informal feedback that some of the program application processes and requirements could use clarification and/or updating. This stakeholder feedback was also taken into consideration while updating these subparts.

IV. Summary of Changes to the Rule

This section presents the major changes to the existing grant regulation which includes removing and reserving subpart A and revising and reorganizing the sections in subparts F, J and K into a more sequential order of events as they occur during the application, award, and post-award processes. In addition, as stated above, each subpart has been reorganized to be a standalone set of definitions and requirements for each specific grant program. Defined terms have been capitalized throughout the preamble and regulatory text.

A. Subpart A—General Requirements for Cooperative Services Grant Programs

Subpart A, consisting of §§ 4284.1 through 4284.100, has been removed and reserved. Relevant sections of this subpart were moved to subparts F and K and obsolete sections, definitions, and language were removed.

B. Subpart F—Rural Cooperative Development Grants

1. Section 4284.501, Purpose, was revised to clarify the intent of the RCDG program and to describe generally the organizations that are eligible to apply.

2. The section heading for § 4284.502 was changed from “Policy” to “Organization of subpart”. The policy language was removed because the Agency’s policies are incorporated into the regulation. This new section was added to identify the main sections of the revised subpart and summarize the information in each section.

3. The section heading for § 4284.503 was changed from “Program administration” to “Definitions”. The

program administration language was removed from the subpart to streamline program language. The definitions in this section were formerly located in § 4284.504 and several were added from § 4284.3. The Agency revised some of the definitions to be consistent with the way that 2 CFR part 200 defines terms. Language was also added to this section to clarify that defined terms are capitalized in the subpart and additional defined terms can be found in applicable regulations. The following summarizes the changes to the definitions in this section:

a. Terms moved from subpart A, § 4284.3. The terms Agency, Economic Development, Matching Funds, Nonprofit Institutions, Public Body, Rural and Rural Area, Rural Development, State, State Office and Value-Added were moved to this section from § 4284.3.

b. Revised terms. The definitions for the following terms have been revised:

i. 1994 Institution was revised to indicate that the list of eligible colleges will now be included on the program website.

ii. Center was updated to simplify the definition.

iii. Cooperative Development was updated to simplify the definition and provide clarity around the types of activities that are considered eligible for this program.

iv. Matching Funds was revised to provide clarification on the Matching Funds requirement for this program. Recipients are required by 7 U.S.C. 1932(e) to commit to providing 25 percent (or 5 percent if a 1994 Institution) of private funds and/or in-kind contributions to the Project.

v. Project was revised to clarify the types of activities that can be funded under this program.

vi. Rural and Rural Area were updated to be consistent with the definition used by the Agency.

vii. State was updated to be consistent with the definition used across the Agency.

viii. Value-Added was updated to be more consistent with the value-added methods that are applicable to the program.

ix. The definitions for Federal Award, Institutions of Higher Education, Period of Performance, Project Cost, and Recipient were revised to be in accordance with the definitions in 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

c. Newly defined terms. Definitions for the following terms: Adverse Decision, Adverse Decision Letter,

Applicant, Board of Directors, Cooperative, Grant Agreement/Financial Assistance Agreement, Key Personnel, Mutually-Owned Business, Networking, New Cooperative Approach, Operating Costs, Research and Development, Subaward, Technical Assistance, and Underserved and Economically Distressed were added to the definitions in this subpart in order to provide clarity and additional guidance on terms being used in the subpart.

4. The section heading for § 4284.504 was changed from “Definitions” to “Exception authority”. The definitions were moved to § 4284.503. Exception authority was added to explain the circumstances under which the Agency may grant an exception to any requirement or provision of this subpart. The circumstances are consistent with other programs administered by the Agency.

5. Section 4284.506 was unreserved and titled “Conflict of interest”. The definition of conflict of interest and the Member delegate clause, § 4284.17, were moved to this section. This section was added to clarify and expand the Agency’s policy on conflicts of interest for the RCDG program, and on Recipient conflict of interest requirements from 2 CFR part 200.

6. Section 4284.507 was removed and reserved. The eligibility information from this section was moved to the sections on Applicant and Project eligibility, §§ 4284.520 and 4284.522.

7. The section heading for § 4284.508 was changed from “Use of grant funds” to “Compliance with other laws and regulations”. The use of funds information from this section was moved to § 4284.525. The information now in this section was relocated from § 4284.16 and includes an updated and more comprehensive list of applicable Federal laws, Federal regulations, departmental regulations, and Agency regulations. It also identifies the current official uniform resource locations that can be used to access the information.

8. Section 4284.509 was removed and reserved. The limitations on grants information was moved to § 4284.522, Project eligibility.

9. Section 4284.510 was removed and reserved. The application processing information was moved to § 4284.531, Application requirements.

10. Sections 4284.511, .512 and .513 were removed and reserved. The evaluation screening information, evaluation process information, and evaluation criteria and weights were moved to § 4284.540, Application processing.

11. Section 4284.514 was removed and reserved. The grant closing

information was moved to § 4284.551, Notification of successful Applicants.

12. Section 4284.520 was unreserved and titled “Applicant eligibility”. The information in this section was relocated from § 4284.507 and updated to: (a) Specify that the Applicant must be located within the 50 United States or within a United States territory; (b) Add the Federal requirements for System for Award Management (SAM) registration and unique entity identifier (UEI); (c) Clarify that the Agency will only accept one application per Applicant; and (d) Include specific reasons certain applicants are ineligible.

13. Section 4284.522 was unreserved and titled “Project eligibility”. The information in this section was relocated from §§ 4284.507 and 4284.509 and updated to: (a) Include information on the eligible location of the Project, Project focus, grant amount requested, and how long the Period of Performance is; (b) Provide clarification on what sources of Matching Funds are allowable and how they must be used; and (c) Include specific reasons a Project is not eligible.

14. Section 4284.525 was unreserved and titled “Use of grant and Matching Funds”. The information in this section was relocated from § 4284.508 and updated as follows:

a. More detail was provided on what costs will be considered allowable for establishing and operating a Center.

b. The definitions of Technical Assistance and Cooperative Development are included in this section by reference because they have been updated to capture the eligible activities under this program.

c. Language regarding provision of loans and grants was updated to make it clear that these must be provided as Subawards in accordance with 2 CFR part 200 and are only available for Technical Assistance, including Cooperative Development.

d. The unallowable uses of funds for this program were added for clarity.

15. Section 4284.530 was unreserved and titled “Notifications”. The information in this section was relocated from § 4284.510(a) and updated to clarify the process that the Agency will use to notify the public about the amount of funding available, where and when Applicants can find the requirements for identifying Underserved and Economically Distressed Areas, and other future requirements not addressed in this subpart.

16. Section 4284.531 was unreserved and titled “Application requirements”. The information in this section was relocated from § 4284.510 and

rearranged to present the information in a more clear and logical order which also included updates that streamline the requirements for applying to this program. The updates included:

a. The term “Required forms.” was changed to “Application forms.”

b. The requirement for “Assurances-Non-Construction Program” was removed as they are now captured under SAM.

c. The executive summary requirement was streamlined to reduce duplication.

d. The proposal narrative section was revised to remove burden and reduce duplication. These revisions include:

1. The requirements to include a Project Title and Information Sheet were removed.

2. The title “Goals of the project” was removed, and the section revised to make it clear that Applicants are now required to submit a plan for establishing and operating a Center for Cooperative Development, including providing a description of how the Center will: (i) serve Rural areas, (ii) improve economic conditions, and (iii) seek to incorporate the knowledge and expertise from other organizations. In addition, the plan must describe how the Center plans to remain sustainable in accordance with 7 U.S.C. 1932(e).

3. The title “Work Plan” was revised to “Work plan and budget” and moved under the merit evaluation criteria addressed in (4) below. The requirements for this section were revised to include a demonstration of the Applicant’s commitment to providing Technical Assistance to Underserved and Economically Distressed areas and a commitment to Networking.

4. The Agency will utilize the information provided in response to the Application Requirements to evaluate the merit of each Applicant. Therefore, the merit evaluation criteria, formerly “Evaluation criteria” were incorporated into this section and include: (i) An evaluation of the Applicant’s experience with Technical Assistance, including Cooperative development, (ii) Work plan and budget, (iii) Qualifications of Key Personnel, and (iv) Verification of Matching funds.

5. The title “Performance Evaluation Criteria” was revised to “Project outcomes” and incorporates the Agency’s baseline performance metrics.

6. The title “Undertakings” was removed and these items will be captured under (d)(4)(ii) above.

7. “Delivery of Cooperative development assistance” was changed to “Experience” and moved under merit evaluation criteria to reduce

duplication. The section was revised to simplify the requirements.

e. “Qualifications of Personnel” was revised to “Qualifications of Key Personnel” and moved under merit evaluation criteria. The section was updated to simplify requirements.

f. “Support and commitments” and “Future Support” were removed to streamline and prevent duplication. The requirements are now captured under the proposal narrative.

g. “Verification of Matching Funds” was placed under “Merit evaluation criteria” and was updated to simplify the requirement.

17. Section 4284.533 was unreserved and titled “Submission requirements”. The information in this section was relocated from § 4284.7 and updated to provide specific information on the submission period, the submission address, and the submission format. This information was previously supplied in an annual notification.

18. Section 4284.540 was unreserved and titled “Application processing”. The information in this section was relocated from §§ 4284.511, 4284.512, and 4284.513 and revised as follows:

a. The process by which the Agency processes applications received by the program was added. This includes the Agency’s risk evaluation process, required by 2 CFR 200.206, which requires Federal awarding agencies to have a framework in place for evaluating the risks posed by Applicants being considered for a Federal award.

b. The merit evaluation criteria were revised to: (1) better reflect the goals of the program, (2) remove duplication, and (3) streamline the evaluation process. The evaluation criteria now include the scoring ranges for each criterion.

c. “Administrative capabilities” was removed and the information required to determine if an applicant has the necessary experience to successfully run this program is now captured under “Qualifications of Key Personnel”.

d. The sections titled “Technical assistance and other services”, “Economic development”, and “Delivery” were merged, and the title was changed to “Experience” to streamline and reduce duplication.

e. The sections titled “Commitment” and “Linkages” were removed and now captured under “Work plan and budget”. Reference to horizontal and vertical linkages was modified to express that Centers should be Networking with other Centers and/or organizations involved in Rural Economic Development efforts. This includes organizations in other States.

f. The “Matching Funds” section was revised to reflect that points will only be awarded for eligible Projects that meet the 25 percent Matching Funds requirement. No additional points will be awarded for cash or in-kind contributions above the Matching Funds requirement.

g. The title “Work plan/Budget” was revised to “Work plan and budget.” The section was streamlined to include an evaluation of the Applicant’s commitment to Underserved and Economically Distressed Areas, as well as its commitment to Networking.

h. The title “Qualifications of those Performing the Tasks” was revised to “Qualifications of Key Personnel” and streamlined to reduce burden and clarify the requirements for demonstrating how Key Personnel are qualified to perform the Project tasks.

i. The sections on “Local support” and “Future support” were removed to streamline and reduce burden.

19. Section 4284.541 was unreserved and titled “Application withdrawal”. This is a new section that explains how an applicant can withdraw an application from consideration. The language is consistent with other Agency programs.

20. Section 4284.550 was unreserved and titled “Award selection”. The information in this section was relocated from § 4284.512 and updated to clarify how applications will be selected for an award.

21. Section 4284.551 was unreserved and titled “Notification of successful Applicants”. The information in this section was relocated from § 4284.514 and updated to clarify and expand the process on how applicants will be notified if their applications have been selected for an award.

22. Section 4284.552 was unreserved and titled “Notification of unsuccessful Applicants”. This section was added to clearly state the process used to notify unsuccessful applicants and to place this information in a section of the regulation that corresponds to the sequential order of events in the application processing timeline.

23. Section 4284.553 was unreserved and titled “Award approval”. The information in this section was relocated from § 4284.514. and clarifies how an award is approved.

24. Section 4284.554 was unreserved and titled “Multi-year award”. This section was added to notify Applicants that the program may accept applications for multi-year awards in the future. Any details regarding the requirements for the multi-year process will be published in the annual notification.

25. Section 4284.560 was unreserved and titled “Reporting requirements”. The information in this section was relocated from § 4284.12. The financial and performance reporting requirements were updated, and guidance was provided on what information must be in the reports as well as the report format and timing. The program also added the requirement that the Recipient, once the project is complete, provide two annual outcome performance reports. The additional reports are needed to demonstrate the viability and final outcome of the Project.

26. Section 4284.561 was unreserved and titled “Monitoring awards”. The information in this section was relocated from § 4284.14 and the description of how awards will be monitored was updated.

C. Subpart J—Value-Added Producer Grants

1. Section 4284.901, Purpose, was revised to clarify that the VAPG program is intended to support for-profit businesses.

2. The section heading for § 4284.902 was changed from “Definitions” to “Organization of subpart”. This is a new section and was added to explain how the subpart is organized. The definition section was moved to § 4284.903.

3. The section heading for § 4284.903 was changed from “Review or appeal rights” to “Definitions”. The Review or appeal rights information was moved to § 4284.952, Notification of unsuccessful Applicants, and the definitions in this section were relocated from § 4284.902. The format of this section was revised to be consistent with the format of the definitions section in 2 CFR part 200. Also, language was added to clarify that defined terms are capitalized in the subpart and additional defined terms can be found in applicable regulations cited in § 4284.908. The following terms were removed, revised or newly added:

a. Removed terms. The following terms have been removed from this section:

i. Administrator was removed to eliminate redundancy.

ii. Conflict of interest has been removed as a definition and is discussed in § 4284.906.

iii. Departmental regulations was removed. The term is only used in § 4284.908 and its meaning is included there. A separate definition is no longer needed.

iv. State Office was removed. The term is only used once in the regulation and the meaning of State Office is included there.

v. Total project cost was removed. The term is no longer used in the regulation.

vi. Venture was removed. The term is no longer used in the regulation.

b. Revised terms. The definitions for the following terms have been revised:

i. Agricultural Commodity was revised to now include horses.

ii. Agricultural Food Product, Change in Physical State, Harvester, Local or Regional Supply Network, Physical Segregation, and Produced in a Manner that Enhances the Value of the Agricultural Commodity were revised to remove the examples from the defined terms. Examples for each are now included in the application tool kit for the program.

iii. Agricultural Producer was revised to have the same meaning as Independent Producer and Producer. After much experience in administering the program and receiving feedback from stakeholders, it was determined that the previous Independent Producer term was confusing because it directed the reader to the Agricultural Producer definition to understand the meaning of the Independent Producer term but did not include language that differentiated the terms from one another.

Additionally, the terms have been used interchangeably in explanatory material prepared on the program. The term ‘Producer’ is utilized in the 2018 Farm Bill definition for Majority-controlled producer-based business venture and has the same meaning as Agricultural Producer and Independent Producer. Therefore, the three terms all have the same meaning. While reworking the definition, the information on Tribes and Tribal entities was moved to § 4284.920, Applicant eligibility.

iv. Applicant was revised to clarify that the term refers to the legal entity and/or owners of the legal entity regardless of ownership percentage.

v. Beginner Farmer or Rancher was revised to remove the language discussing eligibility for reserved funding and priority points. Reserved funding eligibility is now discussed in § 4284.923, Reserved Funds Eligibility and priority points eligibility is now discussed in § 4284.924, Priority points eligibility.

vi. Emerging Market and Farm-or Ranch-Based Renewable Energy were revised to simplify the language.

vii. Family Farm was revised to add more flexibility regarding eligibility.

viii. Feasibility Study was revised to remove the language requiring a Qualified Consultant to conduct a Feasibility Study. That requirement is now discussed in § 4284.931, Application requirements. Also,

clarification was added that the Feasibility Study must provide a comprehensive analysis of the proposed Project.

ix. Independent Producer now has the same meaning as Agricultural Producer. Applicant eligibility requirements previously included in the term are now discussed in § 4284.920, Applicant eligibility.

x. Majority-Controlled Producer-Based Business Venture was revised to match the definition in the 2018 Farm Bill.

xi. Matching Funds has been revised to simplify the language. Matching Funds requirements have been removed and are now discussed in § 4284.922, Project eligibility.

xii. Mid-Tier Value Chain has been revised to move supply chain requirements to § 4284.923, Reserved funds eligibility.

xiii. Socially-Disadvantaged Farmer or Rancher has been revised to move reserved fund eligibility requirements to § 4284.923, Reserved funds eligibility.

xiv. Veteran Farmer or Rancher was revised to move discussion on priority points eligibility to § 4284.924, Priority points eligibility.

c. Newly defined terms. The following terms were added to the definitions in this section:

i. Food Safety, as defined by USDA, was added to incorporate 2018 Farm Bill requirements into the program.

ii. Key Personnel was added to clarify who should be listed in the application as a member of Key Personnel.

iii. Market Expansion was added to provide clarity on eligibility.

iv. The terms Equipment, Letter of Conditions, Period of Performance, Program Income, Project Cost, Producer, Recipient, and TTB Permit were added to this subpart in order to provide clarity and additional guidance on terms being used in the subpart.

4. Section 4284.904, Exception authority, was updated to simplify the language used.

5. Section 4284.905 has been removed and reserved. The Nondiscrimination and compliance with other Federal laws information has been moved to § 4284.908, Compliance with other laws and regulations, to condense all sections that discuss compliance with laws and regulations into one section.

6. The section heading for § 4284.906 was changed from "State laws, local laws, regulatory commission regulations" to "Conflict of interest". The State laws, local laws, regulatory commission regulations information was moved to § 4284.908, Compliance with other laws and regulations, to condense all sections that discuss

compliance with laws and regulations into one section. This new section was added to provide clarity on the Agency's policy regarding conflict of interest and on Recipient conflict of interest requirements from 2 CFR part 200.

7. Section 4284.907 has been removed and reserved. The environmental requirements have been moved to § 4284.908 to condense all sections that discuss compliance with laws and regulations into one section.

8. Section 4284.908, Compliance with other laws and regulations, has been revised to condense all sections that discuss compliance with laws and regulations into one section.

9. Section 4284.909 has been removed and reserved. The forms, regulations, and instructions information were removed and will now be discussed in the annual notification for the program.

10. Section 4284.915 has been removed and reserved. The information pertaining to notifications was moved to § 4284.930, Notifications.

11. Section 4284.916 was unreserved and titled "Reserved funds". This section has been added to provide a listing of the reserved funds and their respective percentage of total program funding that will be available each Fiscal Year. The deadline for the obligation of reserves has been changed from June 30 to September 30, as required by the 2018 Farm Bill.

12. The section heading for § 4284.920 was changed from "Applicant eligibility" to "Eligible Applicants". The following revisions and updates were made to this section:

a. The section was revised into eight distinct paragraphs to clarify the Applicant eligibility requirements.

b. SAM and UEI requirements were added to further clarify that SAM registration and a UEI number are required to be an eligible Applicant for the program.

c. Legal authority paragraph was added to clarify that all applicants must demonstrate legal authority and good standing in the State in which they operate.

d. All Applicant eligibility requirements regarding ownership and control of the Agricultural Commodity have been moved to a new paragraph titled "Ownership and control" for easier identification.

e. The language regarding the submission of multiple grants was revised to clarify that an Applicant may only submit one application each grant cycle unless they are also applying as a member of a Farmer or Rancher Cooperative or an Agricultural Producer Group.

13. Section 4284.921, Ineligible Applicants, was revised to include additional items that would render a VAPG Applicant ineligible.

14. Section 4284.922, Project eligibility, has been revised as follows:

a. Project eligibility requirements were broken into six distinct paragraphs to provide more clarity.

b. Clarification was added that the Applicant must be currently producing the Agricultural Commodity that is the subject of the Project.

c. Language was included to clarify that only a Qualified Consultant can complete a feasibility study.

d. Clarified that Applicant in-kind contributions may satisfy 100 percent of the Matching Funds requirement whereas third-party in-kind contributions can only be used to satisfy up to 49 percent of the Matching Funds requirement.

e. Information that does not pertain to general project eligibility requirements was moved to sections deemed more appropriate.

i. Discussion on the work plan and budget was moved to § 4284.940, Application processing.

ii. Discussion on Feasibility Studies, Business Plans, and Market Expansion Projects was moved to § 4284.931, Application requirements.

iii. Discussion on simplified applications was moved to § 4284.932, Simplified application.

iv. Discussion on the Applicant eligibility requirement regarding quantity of the Agricultural Commodity that will be provided for the project was moved to § 4284.920, Applicant eligibility.

15. Section 4284.923, Reserved funds eligibility, was rearranged to present eligibility requirements in a more clear and logical order. It was also updated to include the new Food Safety reserved fund. The current subpart requires Beginning Farmers or Ranchers and Socially-Disadvantaged Farmers or Ranchers Applicants with multiple owners to be "comprised entirely" of individuals that meet the applicable reserved funds definition. This requirement was changed to "comprised of more than 50 percent" to match the requirement for receiving priority points in these categories.

16. Section 4284.924, Priority points eligibility, was revised to allow Applicants that qualify for priority points to self-certify their status as a Beginning Farmers or Rancher, Socially-Disadvantaged Farmers or Rancher, Veteran Farmers or Rancher, operator of a Small- or Medium-Sized Farms or Ranches that is structured as a Family

Farm, or Farmer or Rancher Cooperative.

17. The section heading for § 4284.925 was changed from “Eligible uses of grant and Matching Funds” to “Allowable use of grant and Matching Funds” to match the language used in 2 CFR part 200. The section has been revised to move language related to valuation of in-kind Matching Funds to § 4284.922, Project eligibility. The section has also been revised to include the Food Safety equipment exception of \$6,500 as an allowable use of funds.

18. The section heading for § 4284.926 was changed from “Ineligible uses of grant and matching funds” to “Unallowable use of grant and Matching Funds” to match the language used in 2 CFR part 200. This section has been updated to move language related to conflict of interest to § 4284.906, Conflict of interest. Clarifying language was added to include labor related to the care of live plants as an unallowable activity. Also, several of the unallowable uses of grant and Matching Funds listed were clarified further.

19. Section 4284.927 has been removed and reserved. The information from this section on funding limitations has been moved to § 4284.928, Funding limitations.

20. Section 4284.928 was unreserved and titled “Funding limitations”. The information in this section was relocated from § 4284.927 and revised as follows:

a. Language related to project eligibility was relocated to § 4284.922, Project eligibility.

b. The 2018 Farm Bill requirement to change the Agricultural Marketing Resource Center yearly appropriation to no more than 2.5 percent of VAPG funds has been included.

c. The discussion on reserved funds was moved to § 4284.916, Reserved funds.

21. The section heading for § 4284.930 was changed from “Preliminary Review” to “Notifications”. The information on preliminary reviews has been removed. Agency resources are not available to conduct thorough eligibility reviews of applications both before the application deadline and after it. However, Applicants are still able to contact Agency staff to ask questions and discuss Applicant and Project eligibility potential.

The notification information in this section was relocated from § 4284.915 and rearranged to present the information on public notifications in a more clear and logical order. In addition, the section was revised to change the notification method to the program website versus through the

Federal Register and the timing of notifications was updated to clarify that public notifications will be published no later than the date the application period opens. The annual notice of funding opportunity will continue to be published in the **Federal Register**. This change allows the Agency to use the program website for other types of programmatic changes.

22. The section heading for § 4284.931 was changed from “Application package” to “Application requirements” to more clearly identify what is covered in the section. In addition, this section was updated as follows:

a. All elements that must be included in an application for the program were included.

b. The application forms no longer collected by the Agency because the information is now being collected by SAM were removed.

c. The discussion on the type of performance data that should be collected was moved to § 4284.960, Reporting requirements.

d. The detailed discussion on Matching Funds requirements was moved to § 4284.922, Project eligibility.

e. Added ‘Customer Base and Revenue Increase Metrics’ paragraph to ensure all data needed for metrics required by the program’s statute is submitted by Applicants.

23. Section 4284.932, Simplified application, was revised to add a simplified application process for Food Safety Projects. Also, clarification was added that Agricultural Producers requesting a working capital grant of \$50,000 or more may submit a simplified application.

24. The section heading for § 4284.933 was changed from “Filing instructions” to “Submission requirements” to match the language used in 2 CFR part 200.

The section format was revised to separately address the three critical questions that must be answered to successfully submit an application for the program: how, where, and when to submit an application. Additionally, an open application period of November 1 through February 15 was codified to allow grant applications to be accepted at a consistent time each funding cycle.

25. Section 4284.940, Application processing, was revised to update the procedure used by the Agency to process applications received for the program. In addition, the following revisions were made:

a. A risk evaluation section was added to comply with the language in 2 CFR part 200 requiring Federal awarding agencies to have a framework in place for evaluating the risks posed by

Applicants before they receive Federal Awards.

b. Scoring ranges were added to each evaluation criterion. This will codify the evaluation criteria so the Agency will no longer have to include this information in the annual notification for the program.

c. Criterion 3, Commitments and support, was revised to award additional points to Applicants that have not received a VAPG award previously.

d. Criterion 4, Work plan and budget, was updated to include language clarifying that the basis for valuation of proposed expenses must be included.

e. The sections titled Notifications and Resubmittal by Applicants were removed because the described process was obsolete.

f. The discussion on notifying an Applicant of an ineligible determination has been moved to § 4284.952, Notification of unsuccessful Applicants. Section 4284.942 has been removed and reserved. The proposal evaluation criteria and scoring information was moved to § 4284.940, Application processing.

27. The section heading for § 4284.950 was changed from “Award process” to “Award selection” to identify more clearly what is covered in the section. The section was revised as follows:

a. Additional information on the award and ranking process for awards, including the minimum acceptable score for funding was added.

b. The discussion on notifying Applicants whether or not they have been selected for funding was moved to §§ 4284.951 and 4284.952 on notifying successful and unsuccessful applications.

c. Discussion on Intergovernmental review (IR) was removed. This process does not apply to the VAPG program as determined by the Agency and in concurrence with the USDA Office of the Chief Financial Officer (OCFO). OCFO maintains a website page that describes the IR process and includes a listing of USDA financial assistance programs and activities that are subject to IR requirements. See www.usda.gov/ocfo/federal-financial-assistance-policy/intergovernmental-review.

28. The section heading for § 4284.951 was changed from “Obligate and award funds” to “Notification of successful Applicants” to identify more clearly what is covered in the section. This section was revised to remove application forms no longer collected by the Agency because the information is now being collected by SAM. The section was also revised to add the requirement for a valid producer license

for hemp-related projects, documentation of legal rights for Harvesters, and organizational documents demonstrating legal authority and good standing.

29. Section 4284.952 was unreserved and titled “Notification of unsuccessful Applicants”. This section was added to clearly state the process used to notify unsuccessful Applicants and to place this information in a section of the regulation that corresponds to the sequential order of events in the application processing timeline.

30. The section heading for § 4284.960 was changed from “Monitoring and reporting program performance” to “Reporting requirements”. Monitoring information was moved to § 4284.961, Grant monitoring. The reporting requirements were revised to clearly separate the discussion on financial and performance reporting requirements into two separate sections. The Agency also corrected a technical error to change the reporting period from 45 days to 30 days.

31. The section heading for § 4284.961 was changed from “Grant servicing” to “Grant monitoring” to identify more clearly what is covered in the section. The monitoring discussion from § 4284.960 was incorporated into this section. The information on compliance with specific regulations was moved to § 4284.908, Compliance with other laws and regulations.

32. Section 4284.1000 was added to include the Office of Management and Budget (OMB) control Number 0570–0064, for the burden associated with the VAPG Program.

D. Subpart K—Agriculture Innovation Center Demonstration Program

1. Section 4284.1001, Purpose, was updated to simplify the language and to provide clarity on what services the Centers must provide.

2. The section heading for § 4284.1002 was changed from “Policy” to “Organization of subpart”. The policy language was removed because the Agency’s policies are incorporated into the regulation. This section was added to identify the main sections of the revised subpart and to summarize the information included in each section.

3. The section heading for § 4284.1003 was changed from “Program administration” to “Definitions”. The program administration information is now incorporated throughout the subpart by identifying when the Agency is responsible for a process. The definitions in this section were formerly located in § 4284.1004 and several were moved from § 4284.3. The Agency revised some definitions to be

consistent with the way that 2 CFR part 200 defines terms. Language was also added to this section to clarify that defined terms are capitalized in the subpart. The following summarizes the changes to the definitions in this section:

a. Terms moved from subpart A, § 4284.3. The terms Agency, Agricultural Producer, Equipment, Matching Funds, Nonprofit Institution, State, State Office and Value-Added were moved to this section from § 4284.3.

b. Removed terms. Scale production assessments was removed because the definition is now incorporated into the definition for Producer Services.

c. Revised terms. The definitions for the following terms have been revised:

i. Center was revised to simplify the definition.

ii. Equipment replaces the former term “fixed equipment” to be consistent with 2 CFR part 200.

iii. Nonprofit Organization replaces the former term “Nonprofit Institution” and the definition was revised to reference 2 CFR part 200 as the location for how the term is to be defined.

iv. Producer Services was revised to clarify the types of services that Centers may provide.

v. Qualified Board of Directors was revised to incorporate the required changes from the 2018 Farm Bill. The first change was to allow a State Legislator to serve on the Board of Directors instead of a representative from the State department of agriculture, or its equivalent. The second change was to allow representation from any four Agricultural Commodity Organizations instead of organizations representing the four highest grossing Commodities in the State.

vi. Value-Added Agricultural Product replaces the term Value-Added and the definition was updated to reference the VAPG program.

d. Newly defined terms. Definitions for the following terms: Adverse Decision, Adverse Decision Letter, Agricultural Commodity Organization, Agricultural Food Product, Applicant, Business Plan, Change in Physical State, Commercial Organization, Family Farm, Farm or Ranch, Farm- or Ranch-Based Renewable Energy, Feasibility Study, Federal Award, Financial Assistance Agreement, General Agricultural Organization, Harvester, Indian Tribe, Indirect Costs, Institution of Higher Education, Key Personnel, Letter of Conditions, Local Agricultural Producer, Local Government, Locally-Produced Agricultural Food Product, Period of Performance, Physical

Segregation, Produced in a Manner that Enhances the Value of the Agricultural Commodity, Program Income, Project Costs, Real Property, Recipient, Third Party In-Kind Contributions, and Underserved and Economically Distressed were added to this subpart in order to provide clarity and additional guidance on terms being used in the subpart.

4. The section heading for § 4284.1004 was changed from “Definitions” to “Exception authority”. The definitions were moved to § 4284.1003. This section was added to explain the circumstances under which the Agency may grant an exception to any requirement or provision of this subpart. The circumstances are consistent with other programs administered by the Agency.

5. Section 4284.1006 was unreserved and titled “Conflict of interest”. The contents of this section were relocated from §§ 4284.3 and 4284.17. This section was made a stand-alone section to clarify and expand the Agency’s policy on conflicts of interest for the AIC program and on Recipient conflict of interest requirements from 2 CFR part 200.

6. Section 4284.1007 has been removed and reserved. The eligibility information from this section was moved to the sections on Applicant and project eligibility, §§ 4284.1020 and 4284.1022.

7. The section heading for § 4284.1008 was changed from “Use of grant funds” to “Compliance with other laws and regulations”. The use of funds information was moved to § 4284.1025, Use of funds. The compliance information was relocated from § 4284.16 and includes an updated and more comprehensive list of applicable Federal laws and regulations, departmental regulations, and agency regulations. It also identifies the current official uniform resource locations that can be used to access the information.

8. Section 4284.1009 has been removed and reserved. The limitations on awards information was moved to § 4284.1022, Project eligibility.

9. Section 4284.1010 was removed and reserved. The application processing information was moved to § 4284.1031, Application requirements.

10. Sections 4284.1011, 4284.1012, and 4284.1013 were removed and reserved. The information on evaluation screening, evaluation process, and the evaluation criteria and weights was moved to § 4284.1040, Application processing.

11. Section 4284.1014 was removed and reserved. The grant closing information was moved to § 4284.1051, Notification of successful Applicants.

12. Section 4284.1020 was unreserved and titled “Applicant eligibility”. The information in this section was relocated from §§ 4284.6 and 4284.1007 and has been updated as follows:

a. The Federal requirement for a UEI was added and program requirements were clarified.

b. The requirement to provide information on technical expertise was combined with the requirement to demonstrate experience with providing Producer Services to remove duplication.

c. The paragraph on Matching Funds was moved to § 4284.1022, Project eligibility, because it fits better in that section.

d. Specific reasons applicants are not eligible was added.

13. Section 4284.1022 was unreserved and titled “Project eligibility”. The information in this section was relocated from §§ 4284.1007 and 4284.1009 and updated to include information on what “local” means, what the minimum award size is, how long the Period of Performance is, and limitations on contracts with other Centers. The section also clarifies how Matching Funds are calculated and what sources can be used.

14. Section 4284.1025 was unreserved and titled “Use of funds”. The information in this section was relocated from §§ 4284.10 and 4284.1008 and updated to clarify allowable and unallowable uses of funds.

15. Section 4284.1030 was unreserved and titled “Notifications”. The information in this section was relocated from § 4284.1010(a) and updated to clarify the process that the Agency will use to notify the public about the amount of funding available and any other future requirements not addressed by this subpart.

16. Section 4284.1031 was unreserved and titled “Application requirements”. The information in this section was relocated from § 4284.1010 and updated to streamline the requirements for an application. In particular, the program has moved to a form submission in lieu of a narrative. The new form will be provided to the Office of Information and Regulatory Affairs for review and approval along with the updated information and collection package prior to it being provided to Applicants. The burden for some requirements, such as verification of Matching Funds and demonstrating a Qualified Board of Directors, has been moved to the award phase of the process to reduce burden on Applicants who are not successful in obtaining funding.

17. Section 4284.1033 was unreserved and titled “Submission requirements”. The information in this section was relocated from § 4284.7 and updated to provide specific information on the submission period, address, and format. This information was previously supplied in an annual notification to provide more detail but will now be codified.

18. Section 4284.1040 was unreserved and titled “Application processing”. The information in this section was relocated from §§ 4284.1011, 4284.1012, and 4284.1013 to combine all the application evaluation information into one section. The information was updated as follows:

a. The Agency’s risk evaluation process, required by 2 CFR 200.206, was added.

b. The merit evaluation criteria, also called scoring criteria, were revised to better reflect the goals of the program, remove duplication, and streamline the evaluation process.

c. Priority points were added to reflect the Agency’s commitment to prioritizing projects that meet current mission area priorities.

19. Section 4284.1041 was unreserved and titled “Application withdrawal”. This section was added to explain how an Applicant can withdraw an application from consideration. The language is consistent with other Agency programs.

20. Section 4284.1050 was unreserved and titled “Award selection”. The information in this section was relocated from § 4284.1012 and clarifies how applications will be selected for an award.

21. Section 4284.1051 was unreserved and titled “Notification of successful Applicants”. The information in this section was relocated from § 4284.1014 and updated to clarify and expand the process for how Applicants will be notified if their applications have been selected for an award.

22. Section 4284.1052 was unreserved and titled “Notification of unsuccessful Applicants”. The information in this section was relocated from § 4284.4 and was updated to provide information about how unsuccessful Applicants will be notified.

23. Section 4284.1053 was unreserved and titled “Award approval”. The information in this section was relocated from § 4284.1014 and clarifies how an award is approved.

24. Section 4284.1060 was unreserved and titled “Reporting requirements”. The information in this section was relocated from §§ 4284.12 and 4284.1014 and updated to clarify the financial and performance reporting

requirements to include additional guidance on content and report format.

25. Section 4284.1061 was unreserved and titled “Monitoring awards”. The information in this section was relocated from § 4284.14 and updated to better describe how awards will be monitored.

V. Executive Orders

A. Executive Order 12866—*Classification*

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this final rule as not a major rule, as defined by 5 U.S.C. 804(2).

C. Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The assigned Assistance Listing Number for the AIC Program is 10.377, for the RCDG Program is 10.771, and for the VAPG Program is 10.352. The Assistance Listing Numbers are available on the internet at sam.gov.

D. Executive Order 12372—*Intergovernmental Consultation*

These programs are not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA’s regulations at 2 CFR 415, subpart C.

E. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this rulemaking are covered under three (3) OMB Control Numbers:

1. RCDG (OMB No. 0570–0006). The information collection and recordkeeping requirements for this subpart were updated as part of the three (3) year renewal/revision process and has been provided to OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

2. AIC (OMB No. 0570–0045). The information collection and recordkeeping requirements for this subpart were reviewed and approved by OMB pursuant to the Paperwork Reduction Act 1995 (44 U.S.C. chapter 35).

3. VAPG (OMB No. 0570–0064). The VAPG subpart contains no new reporting or recordkeeping burdens that would require approval under the

Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

F. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this rulemaking action is a categorical exclusion in accordance with 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action,” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (“RFA”) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this final rule.

H. Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

I. Executive Order 13132—Federalism

The policies contained in this final rule do not have any substantial direct effect on 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. Nor does this final rule impose substantial direct

compliance costs on State and local governments. Therefore, consultation with the States is not required.

J. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RBCS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. RBCS has determined that the final rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If Tribal leaders are interested in consulting with RBCS on this final rule, they are encouraged to contact USDA’s Office of Tribal Relations or RD’s Native American Coordinator at: AIAN@usda.gov to request such a consultation.

K. E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

L. Administrative Pay-As-You-Go-Act of 2023

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 (Pub. L. 118–5, div. B, title III, 137 Stat 31) amended 5 U.S.C. 801(a)(2)(A) to require U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. The Act does not apply to this final rule because it does not increase direct spending.

M. Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–004, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively

impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

N. USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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/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, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at www.usda.gov/sites/default/files/documents/ad-3027.pdf 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 an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

- a. *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or
- b. *Fax*: (833) 256–1665 or (202) 690–7442; or
- c. *Email*: program.intake@usda.gov.

List of Subjects in 7 CFR Part 4284

Agriculture, Business and industry, Business development, Economic development, Grant programs—technical assistance, Grant programs—business development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Agency amends 7 CFR part 4284 as follows:

PART 4284—GRANTS

- 1. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C. 1932(e).

Subpart J also issued under 7 U.S.C. 1627c.

Subpart K also issued under 7 U.S.C. 1632b.

Subpart A [Removed and Reserved]

- 2. Remove and reserve subpart A, consisting of §§ 4284.1 through 4284.100.

- 3. Revise subpart F to read as follows:

Subpart F—Rural Cooperative Development Grants

Sec.

- 4284.501 Purpose.
- 4284.502 Organization of subpart.
- 4284.503 Definitions.
- 4284.504 Exception authority.
- 4284.505 [Reserved]
- 4284.506 Conflict of interest.
- 4284.507 [Reserved]
- 4284.508 Compliance with other laws and regulations.
- 4284.509–4284.519 [Reserved]
- 4284.520 Applicant eligibility.
- 4284.521 [Reserved]
- 4284.522 Project eligibility.
- 4284.523–4284.524 [Reserved]
- 4284.525 Use of grant and Matching Funds.
- 4284.526–4284.529 [Reserved]
- 4284.530 Notifications.
- 4284.531 Application requirements.
- 4284.532 [Reserved]
- 4284.533 Submission requirements.
- 4284.534–4284.539 [Reserved]
- 4284.540 Application processing.
- 4284.541 Application withdrawal.
- 4284.542–4284.549 [Reserved]
- 4284.550 Award selection.
- 4284.551 Notification of successful Applicants.
- 4284.552 Notification of unsuccessful Applicants.
- 4284.553 Award approval.
- 4284.554 Multi-year award.
- 4284.555–4284.559 [Reserved]
- 4284.560 Reporting requirements.
- 4284.561 Monitoring awards.
- 4284.562–4284.599 [Reserved]
- 4284.600 OMB control number.

§ 4284.501 Purpose.

This subpart implements the Rural Cooperative Development Grant (RCDG) Program. Grants are made to Nonprofit Institutions who in turn provide Technical Assistance including Cooperative Development to start, expand or improve Cooperatively and Mutually Owned Businesses in Rural Areas.

§ 4284.502 Organization of subpart.

The information in this subpart is organized into six main topics:

(a) *General information.* Sections 4284.501 through 4284.519 discuss the purpose of the program, definitions, exception authority, conflict of interest, and compliance with other laws and regulations.

(b) *Eligibility information.* Sections 4284.520 through 4284.529 discuss the eligibility requirements for the program. The sections include information on Applicant eligibility, Project eligibility, and the use of funds. See § 4284.522 for information about the award amounts, Period of Performance, and Matching Funds requirements.

(c) *Application requirements information.* Sections 4284.530 through 4284.539 discuss the requirements for submitting an application. The sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information.* Sections 4284.540 through 4284.549 discuss how the Agency will process applications. The sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an Applicant can withdraw an application from consideration.

(e) *Award information.* Sections 4284.550 through 4284.559 discuss how the Agency will make awards. The sections include information about how applications will be selected for funding, how Applicants will be notified if their applications are selected for funding, how Applicants can resolve disputes regarding funding selections, and the requirements for an Applicant to accept an award and be approved as a Recipient of an award.

(f) *Post-award information.* Sections 4284.560 through 4284.561 discuss the reporting requirements for Recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other.* (1) Sections 4284.562 through 4284.599 are reserved.

(2) Section 4284.600 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.503 Definitions.

These are the definitions for terms used in this subpart. Additional terms used in this subpart are found in the applicable laws and regulations, in particular 2 CFR part 200 and 7 CFR part 11.

1994 Institution means a college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Adverse Decision has the meaning located at 7 CFR 11.1.

Adverse Decision Letter means a letter issued by the Agency to the Applicant or Recipient that explains the Adverse Decision.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA or the Department), or a successor agency.

Applicant means the Nonprofit Institution that is applying for funding through the RCDG program.

Board of Directors (Board) means the group of individuals that manage or direct the Center.

Business Plan means a formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including pro forma financial statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Project. It may also contain background information about the organization or team attempting to reach those goals.

Center means the Rural Cooperative Development Center to be established and/or operated by a Recipient of the RCDG program.

Cooperative means a business or organization owned, democratically governed, controlled and operated by those who use and benefit from it. Profits and losses generated by the organization are distributed in proportion to use as patronage to the user-owners, also known as members. Investment returns to non-members are limited.

Cooperative Development refers to a type of Technical Assistance that establishes and promotes Cooperative businesses through hands-on activities, often but not exclusively, assisting a group through a series of stages. These stages include but are not limited to the following: idea exploration by a group with shared needs, member-use analysis, identifying a steering

committee and guiding them through the development process, modeling effective democratic processes and good governance practices, creation of legal and policy documents, conducting a membership drive, raising member equity, acquiring sufficient capital, supporting operations, ongoing education and training, ongoing Board development and relations with management, supporting decision-making regarding patronage, and fostering an environment that is supportive of Cooperatives.

Economic Development means the economic growth of an area as evidenced by an increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Equipment has the meaning located at 2 CFR 200.1.

Feasibility Study means a comprehensive analysis of the economic, market, technical, financial, and management capabilities of a Project or business in terms of the Project's expectation for success.

Federal Award has the meaning located at 2 CFR 200.1.

Grant Agreement or Financial Assistance Agreement has the meaning located at 2 CFR 200.1.

Institutions of Higher Education has the meaning located at 2 CFR 200.1.

Key Personnel means employees, new hires, consultants, and/or contractors of the Center who provide Technical Assistance including Cooperative Development and oversee and/or complete the tasks in the work plan.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an award letter or award notice.

Matching Funds means a cost-sharing contribution to the Project that is 25 percent of the eligible Project Cost. For 1994 Institutions, a cost-sharing contribution that is 5 percent of the eligible Project Cost.

Mutually Owned Business means a business not incorporated under a Cooperative statute but operating as a Cooperative. Cooperative operation of the business is reflected in the articles and by-laws.

Networking means the creation and sharing of knowledge, best practices and

transferrable strategies, engaging in mentor/mentee relationships amongst Centers, and developing joint Technical Assistance Projects with other Centers and other organizations engaged in Economic Development with the intent of advancing Cooperative Development and its practice.

New Cooperative Approach refers to development of a Cooperatively or Mutually Owned Business approach in a new industry, utilizing a new Cooperative structure, or serving a new function. This industry, structure, or function must be new to the Center or new to the service area.

Nonprofit Institution means any organization or institution, including an accredited Institution of Higher Education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operating Cost means the day-to-day expenses of running a business; for example: utilities, rent on the office space a business occupies, salaries, depreciation, marketing and advertising, and other basic overhead items.

Period of Performance has the meaning located at 2 CFR 200.1.

Project means all of the eligible activities to be funded by the grant and Matching Funds under this subpart.

Project Cost has the meaning located at 2 CFR 200.1.

Public Body means any State, county, city, township, incorporated town or village, borough, authority, district, Economic Development authority, or Indian tribe on Federal or State reservations or other federally recognized Indian tribe.

Real Property has the meaning located at 2 CFR 200.1.

Recipient has the meaning located at 2 CFR 200.1.

Research and Development (R&D) has the meaning located at 2 CFR 200.1.

Rural and Rural Area means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, or in the urban area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants, and any area that has been determined to be "rural in character" by the Under Secretary for Rural Development (RD), or as otherwise identified in this definition as follows:

(1) An area that is attached to the urban area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two (2) census blocks wide. Applicants from such an area should work with their RD State office

to request a determination of whether their project is located in a Rural Area under this provision.

(2) For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(3) For the purposes of this definition, populations of individuals incarcerated on a long-term or regional basis shall not be included in determining whether an area is "rural" or a "rural area".

(4) For the purposes of this definition, the first 1,500 individuals who reside in housing located on a military base shall not be included in determining whether an area is "rural" or a "rural area".

(5) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are "not urban in character."

(6) For the State of Hawaii, all areas within the State are considered Rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(7) For the purpose of defining a Rural Area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes Rural and Rural Area based on available population data.

(8) The determination that an area is "rural in character" will be made by the Under Secretary of RD. The process to request a determination under this provision is outlined in paragraph (8)(ii) of this definition.

(i) The determination that an area is "rural in character" under this definition will apply to areas that are within:

(A) An urban area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urban area of such a city or town; or

(B) An urban area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within one-quarter mile of a Rural Area.

(ii) Units of local government may petition the Under Secretary of RD for a "rural in character" designation by submitting a petition to both the appropriate RD State Director and the Administrator on behalf of the Under

Secretary. The petition shall document how the area meets the requirements of paragraph (8)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable Governor or leader in a similar position and request comments to be submitted within five (5) business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency’s website, and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration.

Rural Development (RD) refers to a mission area within the USDA which includes RBCS, the Rural Housing Service, and the Rural Utilities Service, and their successors.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State Office refers to USDA RD offices located in each State.

Subaward has the meaning located at 2 CFR 200.1.

Technical Assistance means the process of providing targeted support for the startup, expansion, and operational improvement of Cooperatively and Mutually Owned Businesses typically delivered via multiple contacts over a period of time. It includes the transfer of skills and knowledge through research and collection of information to provide guidance and advice; assessment and analysis through Feasibility Studies and Business Plans, customized training, written information, in person or virtual exchanges, web-based curricula, and webinars.

Underserved and Economically Distressed has the meaning located in the annual notification issued on the program website.

Value-Added means the incremental profit earned from each transaction or step in processing after deducting processing costs, depreciation, and other relevant expenses. Each stage of processing or ownership transfer typically adds value to a good, product, or service.

§ 4284.504 Exception authority.

The Administrator of the Agency may, on a case-by-case basis, grant an exception to any non-statutory requirement or provision of this subpart provided that such exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable laws.

§ 4284.505 [Reserved]

§ 4284.506 Conflict of interest.

No conflict of interest or appearance of conflict of interest will be allowed.

(a) *Description.* A conflict of interest occurs in a situation in which a person or entity has a competing, or the appearance of a competing, personal, professional, or financial interest that makes it difficult for the person or entity to act impartially. For purposes of this subpart, interactions among the following individuals constitute a conflict of interest or appearance of a conflict of interest:

- (1) Applicant Board, employees, consultants, and contractors.
- (2) Recipient Board, employees, consultants, and contractors.
- (3) Center Board, employees, consultants, and contractors.
- (4) Subrecipients and their employees, consultants, and contractors.
- (5) Immediate family members of those listed in paragraphs (a)(1) through (4) of this section.

(b) *Written disclosure.* Recipients must comply with 2 CFR 400.2(b), which requires written disclosure of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(c) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(d) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but

this provision shall not be construed to bar, as a contractor under the grant, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.507 [Reserved]

§ 4284.508 Compliance with other laws and regulations.

The Agency, Applicants, and Recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and to reference them as follows:

(a) *Federal laws.* Federal laws are codified in the United States Code (U.S.C.). A selection of laws is identified as follows:

- (1) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).
- (2) Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).
- (3) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).
- (4) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*).
- (5) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations.* Federal regulations are codified in the Code of Federal Regulations (CFR). In particular, 2 CFR parts 1 through 200 address items such as universal identifiers, reporting Subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly encourage Applicants and Recipients to become familiar with 2 CFR part 200 in its entirety.

(c) *Departmental regulations.* Departmental regulations are those regulations that are specific to awards made through the USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) *2 CFR parts 400 through 499.* These parts include USDA’s adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) *7 CFR part 11.* This part includes USDA’s procedures for administrative appeals, as handled by its National Appeals Division.

(3) *7 CFR part 15.* This part includes USDA’s procedures for compliance with nondiscrimination laws and regulations.

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to

a program. They are codified in the CFR. A selection of those regulations is as follows:

(1) *7 CFR part 1900*. This part covers delegations of authority, Adverse Decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) *7 CFR part 1901, subpart E*. This subpart covers civil rights compliance requirements.

(3) *7 CFR part 1951*. This part covers servicing grant awards, including unauthorized assistance.

(4) *7 CFR part 1970*. This part covers environmental policies and considerations.

(e) *Access to laws and regulations*. (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: <https://uscode.house.gov/>.

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be accessed electronically at this website: <https://www.ecfr.gov/>.

§§ 4284.509–4284.519 [Reserved]

§ 4284.520 Applicant eligibility.

(a) *Eligible Applicants*. Applicants are eligible for assistance through this program if they meet the following requirements:

(1) *Applicant type*. A Nonprofit Institution.

(2) *Applicant location*. Applicant must be located in a State.

(3) *Unique entity identifier (UEI)*. Applicants must have a UEI and active registration through the System for Award Management (SAM) at SAM.gov unless exempt under 2 CFR 25.110.

(4) *Multiple grant eligibility*. An Applicant may submit only one application in response to a solicitation. All applications submitted, regardless of the Applicant entity name, that include the same Executive Director, employees, Board, advisory boards or committees of an existing Center or a majority thereof will be determined ineligible for funding.

(b) *Ineligible Applicants*. Applicants are ineligible for assistance through this program if one or more of the following occurs:

(1) The Applicant is an individual, for-profit entity, or Public Body.

(2) The Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.” See 2 CFR part 417 for more information.

(3) The Applicant has an outstanding judgment obtained against the

organization by the United States in a Federal Court (other than United States Tax Court).

(4) The Applicant is delinquent on the payment of Federal income taxes.

(5) The Applicant is delinquent on Federal debt.

(6) The Applicant has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(7) The Applicant has unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(8) The Applicant has an award through this program that is not scheduled to end until after September 30 (for awards that began the preceding October 1) of the current Federal fiscal year, or December 31 (for awards that began the preceding January 1) of the current calendar year.

§ 4284.521 [Reserved]

§ 4284.522 Project eligibility.

(a) *Eligible Projects*. Eligible Projects must meet all of the following requirements. Failure to meet one or more of these requirements means that the application will not be considered for funding.

(1) *Rurality*. All Project activities must serve individuals, Cooperatively and Mutually Owned Businesses, small businesses, or other similar entities in Rural Areas.

(2) *Project focus*. The Project must focus on establishing or operating a Center with the goals of creating jobs in Rural Areas through the development of new Rural Cooperatives, Value-Added processing, and Rural businesses.

(3) *Amount requested*. The amount requested must not exceed any maximum amounts specified in the annual notification issued on the program website.

(4) *Matching Funds*. Matching Funds may be provided in cash by the Applicant, or cash or in-kind by a third party and are required for 25 percent (or 5 percent if a 1994 Institution) of the Project Cost. For example, if an Applicant requests an award amount of \$150,000, the Matching Funds contribution must be \$50,000, and the overall Project Cost is \$200,000.

(i) *Matching Funds*. (A) Must be spent on eligible expenses.

(B) Must be from non-Federal sources unless authorized to be used as Matching Funds by the legislation authorizing the Federal source of funding.

(C) Must be spent in advance or as a pro-rata portion of grant funds being spent.

(ii) *In-kind contributions*. (A) Cannot include over-valued, in-kind contributions.

(B) You must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a Matching Funds requirement.

(C) In-kind contributions provided by individuals, businesses, or Cooperatives which are being assisted by the Center cannot be provided for the direct benefit of their own Projects as USDA RD considers this to be a conflict of interest.

(5) *Use of funds*. The Project must use grant and Matching Funds for allowable purposes. See § 4284.525.

(6) *Period of Performance*. The Period of Performance cannot exceed one (1) year. The grant period should begin no earlier than October 1 (the beginning of the Federal fiscal year) and no later than January 1 (the beginning of the calendar year).

(b) *Ineligible Projects*. Projects are ineligible for assistance through this program if the application:

(1) Requests more than the maximum grant amount;

(2) Focuses assistance on one Cooperatively or Mutually Owned Business;

(3) Includes a conflict of interest (see § 4284.506) where the expenses associated with the conflict of interest exceed 10 percent of the Project Cost. If the costs associated with the conflict of interest are 10 percent or less, the process in paragraph (b)(4) of this section will be followed;

(4) Includes unallowable costs (see § 4284.525) totaling more than 10 percent of Project Costs. If the application includes 10 percent or less of Project Costs in unallowable costs, and the application is otherwise eligible and selected for funding, those unallowable costs must be removed. If time permits, the Agency may allow those unallowable costs to be replaced with allowable costs. Otherwise, the amount of the Award will be reduced accordingly. If we cannot determine the percentage of unallowable costs, your application will not be considered for funding.

§§ 4284.523–4284.524 [Reserved]

§ 4284.525 Use of grant and Matching Funds.

(a) *Allowable uses of grant and Matching Funds*. The following types of activities and expenses are allowable:

(1) Costs associated with establishing or operating a Center, including legal

services, accounting services, clerical assistance, technical services, office supplies, hiring employees, monitoring contracts, professional development for staff, attending conferences that would advance Cooperative Development and its practice, and Board travel;

(2) Technical Assistance including Cooperative Development as defined in § 4284.503;

(3) Costs for coordination of services and sharing of information among the Centers; and

(4) Providing loans and/or grants as Subawards per 2 CFR part 200 for Technical Assistance including Cooperative Development.

(b) *Unallowable uses of grant and Matching Funds.* No funds under this subpart shall be used to:

(1) Pay for the preparation of the grant application;

(2) Pay any costs of the Project incurred prior to the date of grant approval;

(3) Pay expenses not directly related to the funded Project;

(4) Pay for Board/advisory council member's time;

(5) Pay for the Operating Costs of any entity receiving assistance from the Recipient;

(6) Fund R&D;

(7) Duplicate activities paid for by another Federal grant program or activities charged to a previous RCDG Project;

(8) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(9) Pay for any goods or services from a person or entity who has a conflict of interest with the Recipient;

(10) Pay any judgment or debt owed to the United States;

(11) Purchase or make improvements to Real Property;

(12) Plan, develop, repair, rehabilitate, acquire, or construct a building or facility;

(13) Purchase, lease purchase, or install Equipment;

(14) Purchase or pay for the repair of vehicles; or

(15) Fund activities considered unallowable by the applicable cost principles, mostly of which are included in 2 CFR part 200, subpart E, or successor regulation.

§§ 4284.526–4284.529 [Reserved]

§ 4284.530 Notifications.

The Agency will issue any program notifications on the program website.

(a) *Amount of funding available.* The Agency will publish the amount of funding available for awards during each Fiscal Year within 30 calendar days of notification from OMB of the amount available.

(b) *Underserved and Economically Distressed Areas.* The Agency will publish the source for identifying Underserved and Economically Distressed areas no later than the date the application period opens.

(c) *Additional merit evaluation criteria.* The Agency may establish additional merit evaluation criteria to meet the Department's or Agency's key priorities, goals, and objectives. Any such criteria will be published no later than the date the application period opens.

(d) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

§ 4284.531 Application requirements.

All applications must include the following:

(a) *Application forms.* The following forms must be completed, signed, and submitted as part of the application. Any additional forms that may be required will be published in the applicable annual notification.

(1) SF-424, "Application for Federal Assistance."

(2) SF-424 A, "Budget Information—Non-Construction Programs."

(b) *Proposal.* Each proposal must contain the following items. Additional items may be requested and will be published in the applicable annual notification.

(1) Title page.

(2) Table of contents.

(3) A summary of the proposal should briefly describe the Center, the goals of the Project, and the amount requested.

(4) Applicants must discuss how the following are met:

(i) Eligibility requirements in § 4284.520; including how they identify as an Institution of Higher Education or Nonprofit Institution.

(ii) Project eligibility requirements in § 4284.522; and

(iii) Eligible use of grant and Matching Funds requirements in § 4284.525.

(5) The proposal narrative should address how the Center will improve the economic conditions of Rural Areas by providing Technical Assistance including Cooperative Development. In particular, the Applicant must:

(i) Substantiate that the Center will use RCDG funds to serve Rural Areas in the United States as defined in § 4284.503.

(ii) Provide a description of the contributions that this Project is likely

to make that will improve the economic conditions of the Rural Areas served by the Center.

(iii) Discuss how the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, Tribal Governments, and State and local governments.

(iv) Discuss how the Center intends to take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector. Applicants should indicate what financial support has been received in the past three (3) years from private sources and share plans of how the Applicant intends to secure long term sustainability of the Center.

(v) Merit evaluation criteria must be addressed in narrative form by the Applicant.

(A) *Experience.* Describe the Center's experience in Technical Assistance including Cooperative Development. Include the Center's role and accomplished outcomes for each organization assisted. Described experience must be within the last three (3) years. Centers that are not yet established should discuss the expertise and track record of Key Personnel expected to perform activities related to the Project. Provide the following for each organization assisted:

(1) Name of organization;

(2) Organization's complete address;

(3) Indicate whether the service location is Rural;

(4) Indicate whether the organization is Cooperatively or Mutually owned;

(5) Discussion on the Applicant's role(s) in providing Technical Assistance, including Cooperative Development;

(6) Date(s) of service;

(7) Indicate if a Cooperatively or Mutually Owned Business was established as a result of the Cooperative Development services provided;

(8) Date the Cooperatively or Mutually Owned Business was established;

(9) Indicate whether the Cooperatively or Mutually Owned Business is active or inactive;

(10) Discussion on any New Cooperative Approach used; and

(11) Discussion on the outcomes of the assistance, including but not limited to, the retention of Cooperatively or Mutually Owned Businesses, jobs created and/or saved, or other economic conditions (e.g., number of housing units, number of childcare spaces, etc.).

(B) *Work plan and budget.* All tasks in the work plan and budget must be for

allowable uses of funds. For each task, the following must be provided:

(1) A detailed narrative description, for each of the Technical Assistance, Cooperative Development, and Networking tasks as well as any Subawards for loans and/or grants. Applicants must identify project partners for Networking tasks;

(2) A detailed breakdown of all estimated Project Costs including Operating Costs, with grant and Matching Funds identified separately;

(3) Key Personnel that will be responsible for overseeing and/or conducting each task;

(4) A specific timeframe corresponding to the actual time each task is estimated to be completed; and

(5) Zip code for each of the organizations being assisted who are located in Underserved and Economically Distressed areas.

(C) *Qualifications of Key Personnel.* Key Personnel are expected to be qualified, committed, and available during the Period of Performance. The following must be provided for each Key Personnel identified in the work plan and budget.

(1) Name of Key Personnel;

(2) A summary of formal training and/or skills and years of experience directly related to the task(s) to be performed as outlined in the work plan and budget; and

(3) For Key Personnel to be hired, list the necessary qualifications needed to complete Project task(s).

(D) *Verification of Matching Funds.* Applicants must provide authentic documentation from the source(s) of Matching Funds to confirm the eligibility and availability of both cash and in-kind contributions that meet the Matching Funds requirements as defined in §§ 4284.503 and 4284.522. If selected for funding, Matching Funds will be reverified before a Financial Assistance Agreement is executed.

(vi) Applicants must certify that Matching Funds will be spent at the same time grant funds are anticipated to be spent and that expenditures of Matching Funds shall be pro-rated or spent in advance of grant funding, such that for every dollar of the grant funds requested, at least 25 cents (5 cents for 1994 Institutions) of Matching Funds will be expended.

(vii) To measure the success of the Project in a quantitative way, Applicants must have baseline and target performance metrics and will have a baseline metric of zero. Applicants must provide a target metric for each of the following performance metrics:

(A) Number of Rural groups assisted.

(B) Number of Cooperatives assisted.

(1) Number of jobs created/saved.

(2) Number of jobs created/saved in Underserved and Economically Distressed areas.

(C) Number of Mutually Owned Businesses (LLC/LLP) assisted.

(1) Number of jobs created/saved.

(2) Number of jobs created/saved in Underserved and Economically Distressed areas.

(D) Number of other businesses assisted.

(1) Number of jobs created/saved.

(2) Number of jobs created/saved in Underserved and Economically Distressed areas.

(E) Number of Business Plans developed.

(F) Number of Cooperatives incorporated.

(G) Number of Feasibility Studies completed.

(H) Number of workshops/seminars conducted.

(I) Number of conferences held.

(1) Number of conferences conducted with other Centers.

(2) Number of conferences conducted with other organizations.

(J) If working with housing, number of housing units created/saved.

(K) For consumer co-ops (grocery, retail) number of people with access to goods or services.

(L) Financial loss avoided as a result of 'no-go' decision in the Cooperative Development process.

(M) Any additional performance measures as outlined in your Financial Assistance Agreement, or specified in the annual notification.

(1) It is permissible to have a zero in a performance metric. Jobs created targets must be calculated based upon actual jobs to be created by the Center because of RCDG funding or actual jobs to be created by Cooperatively or Mutually Owned Businesses as a result of the assistance from the Center. Jobs saved targets must be calculated only on actual jobs that would have been lost if the Center did not receive RCDG funding or actual jobs that would have been lost without assistance from the Center.

(2) Additional performance metrics can be suggested, for example; where jobs created or jobs saved may not be a relevant indicator (e.g., housing). These additional criteria must be specific and measurable performance metrics to be included in a Federal Financial Assistance Agreement.

§ 4284.532 [Reserved]

§ 4284.533 Submission requirements.

Unless otherwise specified in an annual notification issued under

§ 4284.530, the following requirements apply to all applications.

(a) *Submission period.* The application period opens on March 1 and closes 11:59 p.m. Eastern time, on June 1. Applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency.

(b) *Submission process.* The annual notification will be published on the OMB-designated governmentwide website and will provide instructions on how and where to submit completed applications for RCDG funding. All items required for the application must be submitted in a single application package. Revisions or additional information will not be accepted after the application period closes. Incomplete applications will be rejected and not considered for funding.

§§ 4284.534–4284.539 [Reserved]

§ 4284.540 Application processing.

The following information describes the way the Agency will process applications, including the evaluation of eligibility, risk, and merit.

(a) *Eligibility evaluation.* The Agency will review all applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. In particular, the Agency will check the OMB designated repository of government information and, applicants that are excluded from Federal funding will be determined ineligible (see 2 CFR 200.206 for more information). An application must include all application requirements identified in § 4284.531, or the Agency will determine that it is ineligible for assistance.

(b) *Risk evaluation.* The Agency will review those applications that are determined to be eligible for the program.

(1) Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award.

(2) If risk evaluation findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is ineligible for funding.

(3) The Agency will determine if the Applicant has satisfactory performance for all Federal Awards received in the last five (5) years, based upon review of deficiencies reported in the Federal Awardee Performance and Integrity Information System, or its successor

system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds, including achieving the level of funds approved and committed for Underserved and Economically Distressed areas.

(c) *Merit evaluation (Up to 100 total points)*. The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The merit evaluation will be conducted by a panel of USDA employees who will convene to reach a consensus on the merit of each eligible application. The merit evaluation will be based on the following criteria:

(1) *Experience (Up to 30 points)*. The Agency will evaluate the Applicant's demonstrated experience in Technical Assistance including Cooperative Development; and effectiveness in accomplishing effective outcomes through the development of Cooperatively and Mutually Owned Businesses. Points will be awarded based on the following:

(i) Up to 5 points for track record in providing Technical Assistance to promote and assist the development of Cooperatively and Mutually Owned Businesses.

(ii) Up to 5 points for ability to facilitate Cooperative Development that results in the establishment of Cooperatively and Mutually Owned Businesses in Rural Areas.

(iii) Up to 5 points for ability to facilitate the establishment of New Cooperative Approaches in Rural Areas.

(iv) Up to 5 points for the ability to assist in the retention of businesses in Rural Areas.

(v) Up to 5 points for ability to create and/or save jobs that improve economic conditions of Rural Areas.

(vi) Up to 5 points for ability to improve other economic conditions in Rural Areas.

(2) *Work plan and budget (Up to 45 points)*. The Agency will evaluate the Applicant's work plan and budget on its ability to provide a clear, logical, realistic and efficient use of grant and Matching Funds; level of commitment to Underserved and Economically Distressed areas; and Networking with States, Centers and other organizations engaged in Economic Development efforts in Rural Areas. Points will be awarded based on the following:

(i) *Work plan and budget detail*. Up to 30 points will be awarded as follows:

(A) 0 points will be awarded if the application does not address paragraphs (c)(2)(i)(B) through (E) of this section.

(B) Up to 10 points will be awarded if the application provides a detailed narrative description for each of the specific tasks to be completed.

(C) Up to 10 points will be awarded if the application provides a detailed breakdown of all estimated Project Costs, including Operating Costs, for each task with grant and Matching Funds identified separately.

(D) Up to 5 points will be awarded if the application identifies the Key Personnel associated with each task.

(E) Up to 5 points will be awarded if the application provides specific timeframes for each task.

(ii) *Underserved and Economically Distressed*. Up to 15 points will be awarded to Applicants whose work plans and budgets demonstrate their commitment to Underserved and Economically Distressed area(s) as defined in the annual notification.

(A) 0 points will be awarded if the application does not identify tasks and a budget commitment to Underserved and Economically Distressed area(s).

(B) Up to 5 points will be awarded if the Applicant identifies the Underserved and Economically Distressed area(s) within their service area.

(C) Up to 10 points will be awarded if the Applicant's budget commitment (grant and Matching Funds) to Underserved and Economically Distressed areas is:

(1) Less than 5 percent budget commitment = 2 points.

(2) 5 percent or greater but less than 10 percent budget commitment = 4 points.

(3) 10 percent or greater but less than 25 percent budget commitment = 6 points.

(4) 25 percent or greater but less than 50 percent budget commitment = 8 points.

(5) 50 percent or more budget commitment = 10 points.

(3) *Networking*. Up to 10 points will be awarded to Applicants who demonstrate a commitment to Networking and plan to develop multi-organizational and multi-State Cooperative Development approaches.

(i) Up to 5 points will be awarded if the Applicant describes how it intends to create and share best practices and transferrable strategies with other Centers or organizations engaged in Economic Development.

(ii) Up to 5 points will be awarded if the Applicant describes how it will develop joint Technical Assistance, including Cooperative Development,

projects and mentor/mentee relationships with other Centers and other organizations engaged in Economic Development.

(4) *Qualifications of Key Personnel (Up to 10 points)*. The Agency will evaluate if the Key Personnel listed in the work plan and budget are qualified for their related task(s). Points will be awarded as follows:

(i) 0 points will be awarded if the Applicant does not identify formal training, skills, and years of experience for any Key Personnel.

(ii) 1 to 5 points will be awarded if the Applicant details the formal training, skills, and years of experience of some, but not all of the Key Personnel.

(iii) 6 to 10 points will be awarded if the Applicant details the formal training, skills, and years of experience of all Key Personnel.

(5) *Matching Funds commitment (5 points)*. Applicants must meet the Matching Funds requirement to be considered for points. Applicants who meet the 25 percent (5 percent for 1994 Institutions) Matching Funds requirement will receive 5 points.

§ 4284.541 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency if the Project is no longer viable, or the Applicant is no longer requesting financial assistance for the Project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.542–4284.549 [Reserved]

§ 4284.550 Award selection.

Applications will be selected for further processing and consideration of an award after the merit evaluation process is completed for all eligible applications. Applications will be ranked solely based on the points awarded, and they will be funded in rank order until available funds are expended. If there is a tie, the Administrator of the Agency will use discretion to break the tie to improve the geographic diversity of Recipients and/or prioritize Projects that advance the Department or Agency's key priorities, goals, and objectives. If an application cannot be fully funded, the Agency may offer partial funding to the extent funds are available. If an application is ranked and not funded, it will not be carried forward into the next funding competition.

§ 4284.551 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded using available funds with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the term of the award.

(b) Applicants receiving a Letter of Conditions will have 60 calendar days to meet the conditions of the award. Some awards may be subject to additional conditions, depending on the nature of the Project and the Agency's determination of risk. The following additional forms must be completed by all successful Applicants:

(1) Form RD 1942–46, “Letter of Intent to Meet Conditions.”

(2) Form RD 1940–1, “Request for Obligation of Funds.”

(3) Form RD 400–4, “Assurance Agreement.”

(4) SF–LLL, “Disclosure of Lobbying Activities,” for entities that engage in lobbying activities.

(5) Form RD 4280–2, “Rural Business-Cooperative Service Financial Assistance Agreement.”

§ 4284.552 Notification of unsuccessful Applicants.

Applicants whose applications are ineligible for financial assistance or did not score high enough to be funded will be notified as soon as is practicable. The notification will be in writing using an Adverse Decision Letter. This letter will outline the reason(s) for the Agency's decision and any dispute resolution alternatives available to the Applicant.

§ 4284.553 Award approval.

Applicants whose applications are eligible for financial assistance and that score high enough to be funded will have their awards approved by the Agency once the Applicant has met all of the conditions of the award. The approval will be conveyed through the execution of Form RD 4280–2, which is the Financial Assistance Agreement, and provides all terms of the award. Once the award has been approved, the Recipient may begin work on the Project and incur costs.

§ 4284.554 Multi-year award.

The Agency may provide a multi-year funding opportunity to previous Recipients. If the Agency provides a multi-year funding opportunity, the application requirements and award process will be included in the annual notification.

§§ 4284.555–4284.559 [Reserved]**§ 4284.560 Reporting requirements.**

Recipients are required to submit financial reports and performance reports on a semi-annual basis. A final financial report and performance report must also be submitted within 120 days after the expiration or termination of the grant.

(a) Failure to submit either a financial report or a performance report within the specified timeframes may result in the Agency withholding grant funds.

(b) Recipients must complete the Project in accordance with the terms and conditions specified in the approved work plan and budget, the Financial Assistance Agreement, and the Letter of Conditions.

(c) Recipients must expend funds only for eligible purposes and will be monitored by the Agency for compliance. Recipients must maintain a financial management system and maintain compliance with Federal Cost Principles in accordance with 2 CFR parts 200 through 299.

(1) *Reporting format and timing.* All performance reports must include a discussion on the performance metrics discussed in the application to determine whether the primary goals and objectives proposed in the approved work plan and budget were accomplished during the reporting period. Formatting of financial reports and performance reports, as well as timing for submission of these reports can be found in the Financial Assistance Agreement.

(2) *Project outcome performance report.* Once the Project is complete, the Recipient must provide the Agency with two annual outcome performance reports. Formatting and submission requirements for this report are included in the Financial Assistance Agreement.

§ 4284.561 Monitoring awards.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.508 for more information). The Agency will designate a contact person for each award. The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting, documentation, or for failure to comply with Agency requirements.

§§ 4284.562–4284.599 [Reserved]**§ 4284.600 OMB control number.**

The reporting and recordkeeping requirements contained in this subpart have been approved by OMB and have been assigned OMB control number

0570–0006 in accordance with the Paperwork Reduction Act of 1995.

■ 4. Revise subpart J to read as follows:

Subpart J—Value-Added Producer Grant Program

Sec.

- 4284.901 Purpose.
- 4284.902 Organization of subpart.
- 4284.903 Definitions.
- 4284.904 Exception authority.
- 4284.905 [Reserved]
- 4284.906 Conflict of interest.
- 4284.907 [Reserved]
- 4284.908 Compliance with other laws and regulations.
- 4284.909–4284.915 [Reserved]
- 4284.916 Reserved funds.
- 4284.917–4284.919 [Reserved]
- 4284.920 Eligible Applicants.
- 4284.921 Ineligible Applicants.
- 4284.922 Project eligibility.
- 4284.923 Reserved funds eligibility.
- 4284.924 Priority points eligibility.
- 4284.925 Allowable uses of grant and Matching Funds.
- 4284.926 Unallowable uses of grant and Matching Funds.
- 4284.927 [Reserved]
- 4284.928 Funding limitations.
- 4284.929 [Reserved]
- 4284.930 Notifications.
- 4284.931 Application requirements.
- 4284.932 Simplified application.
- 4284.933 Submission requirements.
- 4284.934–4284.939 [Reserved]
- 4284.940 Application processing.
- 4284.941 Application withdrawal.
- 4284.942–4284.949 [Reserved]
- 4284.950 Award selection.
- 4284.951 Notification of successful Applicants.
- 4284.952 Notification of unsuccessful Applicants.
- 4284.953–4284.959 [Reserved]
- 4284.960 Reporting requirements.
- 4284.961 Grant monitoring.
- 4284.962 Transfer of obligations.
- 4284.963–4284.999 [Reserved]
- 4284.1000 OMB control number.

§ 4284.901 Purpose.

This subpart implements the Value-Added Agricultural Product Market Development grant program (Value-Added Producer Grants (VAPG)) that provides grants to support Agricultural Producers' for-profit businesses that produce and market Value-Added Agricultural Products.

§ 4284.902 Organization of subpart.

The information in this subpart is organized into six main topics:

(a) *General information.* Sections 4284.901 through 4284.919 discuss the purpose of the program, definitions, exception authority, conflict of interest, compliance with other laws and regulations, and reserved funds.

(b) *Eligibility information.* Sections 4284.920 through 4284.929 discuss the eligibility requirements for the program.

The sections include information on Applicant eligibility, Project eligibility, reserved funds eligibility, priority points eligibility, and the use of funds.

(c) *Application requirements information.* Sections 4284.930 through 4284.939 discuss the requirements for submitting an application. The sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information.* Sections 4284.940 through 4284.949 discuss how the Agency will process applications. The sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an Applicant can withdraw an application from consideration.

(e) *Award information.* Sections 4284.950 through 4284.959 discuss how the Agency will make awards. The sections include information about how applications will be selected for funding, how Applicants will be notified whether their applications have been selected for funding, how Applicants can resolve disputes regarding funding selections, and the requirements for an Applicant to accept an award and be approved as a recipient of an award.

(f) *Post-award information.* Sections 4284.960 through 4284.962 discuss the reporting requirements for recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other.* (1) Sections 4284.963 through 4284.999 are reserved.

(2) Section 4284.1000 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.903 Definitions.

These are the definitions for terms used in this subpart. Additional defined terms used in this subpart may be found in the applicable laws and regulations cited in § 4284.908, in particular 2 CFR part 200. If a term is defined differently in an applicable regulation and in this subpart, such term shall have the meaning as found in this subpart.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA or the Department), or a successor agency.

Agricultural Commodity means an unprocessed product of Farms, Ranches, nurseries, and forests and natural and

man-made bodies of water, that the Agricultural Producer has cultivated, raised, or harvested with legal access rights. Agricultural Commodities include plant and animal products and their by-products, such as crops, forestry products, hydroponics, nursery stock, aquaculture, meat, on-Farm generated manure, and fish and seafood products. Agricultural Commodities do not include animals raised or sold as pets, such as cats, dogs, and ferrets.

Agricultural Food Product refers to raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption.

Agricultural Producer, Independent Producer or Producer means a for-profit agricultural business, or entity that is 100 percent owned and controlled by an individual, entity or Family Farm that produces an Agricultural Commodity through participation in the day-to-day labor, management, and field operations; or that has the legal right to harvest an Agricultural Commodity that is the subject of the VAPG Project.

Agricultural Producer Group means a non-profit membership organization that represents Agricultural Producers and whose mission includes working on behalf of Agricultural Producers and more than 50 percent of whose membership and board of directors is comprised of Agricultural Producers.

Applicant means the legal entity and/or owner(s) of the legal entity (regardless of ownership percentage), submitting an application to participate in the competition for program funding.

Beginning Farmer or Rancher means an Agricultural Producer (other than a Harvester) that has operated a Farm or Ranch for no more than 10 years or an eligible Applicant entity that has an ownership or membership of more than 50 percent farmers or ranchers each of whom have operated a Farm or Ranch for no more than 10 years.

Business Plan means a formal statement of a set of business goals, the reasons why they are believed attainable, and the plan for reaching those goals, including Pro Forma Financial Statements appropriate to the term and scope of the Project and sufficient to evidence the viability of the Project. It may also contain background information about the organization or team attempting to reach those goals.

Change in Physical State means an irreversible processing activity that alters the Agricultural Commodity into a substantially different, marketable Value-Added Agricultural Product. This processing activity must be something other than a post-harvest process that primarily acts to preserve the commodity for later sale.

Emerging Market means a developing, geographic or demographic market that has been supplied by the Applicant or the Applicant's product for two (2) years or less.

Equipment has the meaning located at 2 CFR 200.1.

Family Farm means a Farm or Ranch whose owner(s) are primarily responsible for daily physical labor, business and/or strategic management; whose hired help only supplements family labor; and whose owners are related by blood or marriage or are Immediate Family.

Farm or Ranch means any place from which \$1,000 or more of Agricultural Commodities were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farm- or Ranch-Based Renewable Energy means renewable energy generated by use of an Agricultural Commodity on a Farm or Ranch, owned or leased by an Agricultural Producer, which provides the Agricultural Producer with an expanded customer base and increased revenues.

Farmer or Rancher Cooperative means a business owned and controlled by Agricultural Producers that is incorporated, or otherwise identified by the State in which it operates, as a cooperatively operated business. The Agricultural Producers, on whose behalf the value-added work will be done, must be identified by name or class.

Feasibility Study means a comprehensive analysis of the economic, market, technical, financial, and management capabilities of a Project or business in terms of the Project's expectation for success.

Fiscal Year means the Federal Government's fiscal year, October 1 of a given year through September 30 of the succeeding year.

Food Safety refers to conditions and practices that preserve the quality of food to prevent contamination and food-borne illnesses.

Harvester means an Agricultural Producer that can document legal rights to access and harvest the Agricultural Commodity that will be used for the Value-Added Agricultural Product. This does not include harvesting rights for cultivated commodities. Individuals and entities that merely glean, gather, or collect residual commodities that result from an initial harvesting or production of a primary Agricultural Commodity are not considered Harvesters and are not eligible for this program.

Independent Producer has the same meaning as Agricultural Producer in this section.

Immediate Family means individuals who are closely related by blood, marriage, or adoption, or live within the same household, such as a spouse, domestic partner, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

Key Personnel means the owners, employees, new hires, consultants, and/or contractors who will be overseeing and/or completing the tasks in the work plan.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all of the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an Award Letter or Award Notice.

Local or Regional Supply Network means an interconnected group of individuals and/or entities through which agricultural based products move from production through consumption in a local or regional area of a State.

Locally-Produced Agricultural Food Product refers to raw, cooked, or processed edible substances, beverages, or ingredients intended for human consumption that are raised, produced, and distributed in:

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Majority-Controlled Producer-Based Business Venture refers to a venture greater than 50 percent of the ownership and control of which is held by—

(1) One or more Producers (Agricultural Producers); or

(2) One or more entities, 100 percent of the ownership and control of which is held by one or more Producers (Agricultural Producers). The term 'entity' means—

(i) A partnership;

(ii) A limited liability corporation;

(iii) A limited liability partnership; or

(iv) A corporation.

Market Expansion means a Project in which the Agricultural Producer Applicant seeks to expand the market either geographically or demographically for an existing Value-Added Agricultural Product produced and marketed by the Applicant for at least two (2) years at the time of the application through sales to demonstrably new markets or new customers in existing markets.

Marketing Plan means a plan for the Project that identifies a market window, potential buyers, a description of the

distribution system and possible promotional campaigns.

Matching Funds means a cost-sharing contribution to the Project that is at least equal to the grant amount. Combined grant and Matching Funds equal 100 percent of the Project Costs.

Medium-Sized Farm or Ranch means a Farm or Ranch that is structured as a Family Farm that has averaged \$500,001 to \$1,000,000 in annual gross sales of Agricultural Commodities in the previous three (3) years.

Mid-Tier Value Chain refers to local and regional supply networks that link Agricultural Producers with businesses, cooperatives, or consumers that market Value-Added Agricultural Products in a manner that:

(1) Targets and strengthens the profitability and competitiveness of Small- and Medium-Sized Farms or Ranches that are structured as a Family Farm; and

(2) Obtains agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture that is engaged in the value chain on a marketing strategy.

Period of Performance has the meaning located at 2 CFR 200.1.

Physical Segregation means separating an Agricultural Commodity or product on the same Farm from other varieties of the same commodity or product on the same Farm during production and harvesting, with assurance of continued separation from similar commodities during processing and marketing in a manner that results in the enhancement of the value of the separated commodity or product.

Planning Grant means a grant to facilitate the development of a defined program of economic planning activities to determine the viability of a potential value-added Project, and specifically for the purpose of paying for conducting and developing a Feasibility Study, Business Plan, and/or Marketing Plan associated with the processing and/or marketing of a Value-Added Agricultural Product.

Produced in a Manner that Enhances the Value of the Agricultural Commodity refers to the use of a recognizably coherent set of agricultural production practices in the growing or raising of the Agricultural Commodity, such that a differentiated market identity is created for the resulting product.

Producer has the same meaning as Agricultural Producer in this section.

Pro forma Financial Statement means a financial statement that projects the future financial position of a company. The statement is part of the Business

Plan and includes an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. The statement must include projections for a minimum of three (3) years in the form of cash flow statements, income statements, and balance sheets.

Program Income has the meaning located at 2 CFR 200.1.

Project means all of the eligible activities to be funded by the grant and Matching Funds.

Project Cost has the meaning located at 2 CFR 200.1.

Qualified Consultant means a third-party, without a conflict of interest, possessing the knowledge, expertise, and experience to perform the specific task required in an efficient, effective, and authoritative manner.

Recipient has the meaning located at 2 CFR 200.1.

Rural Development (RD) means a mission area within USDA, which includes the Rural Housing Service, Rural Utilities Service, and RBCS.

Small-Sized Farm or Ranch means a Farm or Ranch that is structured as a Family Farm that has averaged \$500,000 or less in annual gross sales of Agricultural Commodities in the previous three (3) years.

Socially-Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a Socially-Disadvantaged Group.

Socially-Disadvantaged Group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

State means any of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Steering Committee means an unincorporated group comprised wholly of specifically identified Agricultural Producers in the process of organizing one of the program eligible Applicant types.

TTB Permit means a permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB), U.S. Department of the Treasury, granting approval to operate a TTB-regulated alcohol business.

Value-Added Agricultural Product means any Agricultural Commodity produced in a State that:

(1) Meets one of the following methodologies:

- (i) Has undergone a Change in Physical State;
- (ii) Is Produced in a Manner that Enhances the Value of the Agricultural Commodity;
- (iii) Is Physically Segregated in a manner that results in the enhancement of the value of the Agricultural Commodity;
- (iv) Is a source of Farm- or Ranch-Based Renewable Energy, including E-85 fuel; or
- (v) Is aggregated and marketed as a Locally Produced Agricultural Food Product; and

(2) As a result of the Change in Physical State or the manner in which the Agricultural Commodity was produced, marketed, or segregated:

- (i) The customer base for the Agricultural Commodity is expanded; and
- (ii) A greater portion of the revenue derived from the marketing, processing, or Physical Segregation of the Agricultural Commodity is available to the Producer of the commodity.

Veteran Farmer or Rancher means a farmer or rancher who has served in the Armed Forces, as defined in 7 U.S.C. 2279, and who either has not operated a Farm or Ranch or has operated a Farm or Ranch for not more than 10 years; or is a Veteran who first obtained status as a veteran during the most recent 10-year period.

Working Capital Grant means a grant to provide funds to operate a value-added Project, specifically to pay the eligible Project expenses related to the processing and/or marketing of the Value-Added Agricultural Product.

§ 4284.904 Exception authority.

Except as specified in paragraphs (a) and (b) of this section, the Administrator of the Agency may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

(a) *Applicant eligibility.* No exception to Applicant eligibility can be made.

(b) *Project eligibility.* No exception to Project eligibility can be made.

§ 4284.905 [Reserved]

§ 4284.906 Conflict of interest.

No conflict of interest or appearance of a conflict of interest will be allowed.

(a) *Description.* A conflict of interest occurs in a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or entity

to act impartially. For the purposes of this subpart, relationships that can involve a conflict of interest include, but are not limited to:

(1) Recipient owners, employees, officers, agents, consultants, and contractors.

(2) Immediate family members of those listed in paragraph (a)(1) of this section.

(b) *Written disclosure.* Recipients must comply with 2 CFR 400.2(b), which includes providing written disclosure of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(c) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(d) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom. But, this provision shall not be construed to bar, as a contractor under the Federal award, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.907 [Reserved]

§ 4284.908 Compliance with other laws and regulations.

The Agency, Applicants, and recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and reference them as follows:

(a) *Federal laws.* Federal laws are codified in the United States Code (U.S.C.). A selection of applicable laws is identified as follows:

(1) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*);

(2) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*); and

(3) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations.* Federal regulations are codified in the Code of Federal Regulations (CFR). A selection of applicable regulations is identified as follows:

(1) 2 CFR parts 1 through 200. These parts address items such as universal identifiers, reporting subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly encourage Applicants and

Recipients to become familiar with 2 CFR part 200 in its entirety.

(2) 27 CFR part 1. This part is applicable to Applicants that will produce and market value-added products in the industries of wine, beer, distilled spirits or other alcoholic merchandise.

(c) *Departmental regulations.*

Departmental regulations are those regulations that are specific to awards made through USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) 2 CFR parts 400 through 499.

These parts include USDA's adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) 7 CFR part 11. This part includes USDA's procedures for administrative appeals, as handled by its National Appeals Division.

(3) 7 CFR part 15d. This part includes USDA's procedures for compliance with nondiscrimination laws and regulations. The Agency will not discriminate against Applicants on the basis of race, color, religion, national origin, sex, marital status, disability, or age (provided that the Applicant has the capacity to contract); because all or part of the Applicant's income derives from any public assistance program; or because the Applicant has in good faith exercised any right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to a program. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) 7 CFR part 1900. This part covers delegations of authority, adverse decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) 7 CFR part 1901, subpart E. This subpart covers civil rights compliance requirements.

(3) 7 CFR part 1951. This part covers servicing grant awards, including unauthorized assistance.

(4) 7 CFR part 1970. This part covers environmental policies and procedures.

(5) 7 CFR part 990. This part applies to Applicants who are proposing to produce, procure, supply or market any component of the hemp plant or hemp related by-products. Applicable Food and Drug Administration and Drug Enforcement Administration regulatory requirements must also be met.

(e) *Access to laws and regulations.* (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: <https://uscode.house.gov/>.

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be accessed electronically at this website: <https://www.ecfr.gov/>.

§§ 4284.909–4284.915 [Reserved]

§ 4284.916 Reserved funds.

(a) The following reserved funds will be made available each Fiscal Year:

(1) 10 percent of total program funding to fund Projects that benefit Beginning Farmers or Ranchers or Socially-Disadvantaged Farmers or Ranchers; and

(2) 10 percent of total program funding to fund Projects where a majority of the requested grant amount goes to improving Food Safety for the purpose of enhancing market access; and

(3) 10 percent of total program funding to fund Projects that propose development of Mid-Tier Value Chains.

(b) Reserved funds not obligated by September 30 of each Fiscal Year shall be available to the Secretary in the next Fiscal Year to make grants under this subpart to eligible Applicants in the general funds competition.

§§ 4284.917–4284.919 [Reserved]

§ 4284.920 Eligible Applicants.

Applicants are eligible for assistance through this program if all of the following requirements are met:

(a) *System for Award Management (SAM) registration, General Certifications and Representations and unique entity identifier (UEI).* At the time of application, each Applicant must have an active registration in SAM before submitting its application in accordance with 2 CFR part 25. This registration must remain current, accurate and complete at all times during which the Applicant has an active Federal award or an application under consideration. The Applicant must also obtain a UEI through SAM.gov.

(b) *Legal authority.* Applicants must certify that they have the legal authority to carry out the purpose of the grant, and/or their business is in good standing in the State where it is incorporated and/or in the State that is the primary location of an applicant's business operations for the VAPG Project.

(c) *Applicant type.* The Applicant meets the definition for one of the

following Applicant types—Agricultural Producer, Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture.

(1) *Agricultural Producer.* An Applicant applying as an Agricultural Producer must identify each owner member by name or class, provide the percentage of ownership of each owner member, and discuss how each owner member meets the definition of Agricultural Producer.

(i) A Steering Committee must apply as an Agricultural Producer and discuss how it intends to form a program-eligible legal entity prior to execution of the Financial Assistance Agreement by the Agency.

(ii) A Harvester must apply as an Agricultural Producer and document its legal right to access and harvest the Agricultural Commodity that will be used for the Value-Added Agricultural Product.

(2) *Agricultural Producer Group.* An Applicant applying as an Agricultural Producer Group must identify each Agricultural Producer member by name or class, provide the percentage of ownership of each member, discuss how each member meets the definition of Agricultural Producer, and discuss how the Applicant meets the definition of Agricultural Producer Group.

(3) *Farmer or Rancher Cooperative.* An Applicant applying as a Farmer or Rancher Cooperative must discuss how they meet the definition of Farmer or Rancher Cooperative.

(4) *Majority-Controlled Producer-Based Business Venture.* An Applicant applying as a Majority-Controlled Producer-Based Business Venture must discuss how it meets the definition of Majority-Controlled Producer-Based Business Venture.

(d) *Ownership and control.* (1) For the Project, the Applicant must produce and own more than 50 percent of the Agricultural Commodity to which value will be added. Agricultural Producers must maintain ownership of the Agricultural Commodity or product from its raw state through the production and marketing of the Value-Added Agricultural Product. All Applicants applying for Working Capital Grant funds must document the quantity of each Agricultural Commodity that will be used for the Value-Added Agricultural Product, expressed in an appropriate unit of measure (pounds, tons, bushels, etc.) to demonstrate the scale of the Applicant's Project. This quantification must include an estimated total quantity of each Agricultural Commodity needed for the Project, the quantity that will be

provided (produced and owned) by the Agricultural Producers of the Applicant organization, and the quantity that will be purchased or donated from third-party sources.

(2) Applicants who produce the Agricultural Commodity under contract for another entity, but do not own the Agricultural Commodity or Value-Added Agricultural Product produced, are not considered Agricultural Producers. Entities that contract out the production of an Agricultural Commodity are not considered Agricultural Producers. Agricultural Producer entities must confirm their owner members as eligible and must identify them by name or class.

(3) The Agency will determine the Agricultural Producer status of Tribes or Tribal entities without regard to ownership of the commodity to which value will be added so long as the Tribal member participant, Tribal entity and/or Tribe own and control more than 50 percent of the Agricultural Commodity necessary for the Project.

(e) *Emerging Market.* An Applicant that is an Agricultural Producer Group, a Farmer or Rancher Cooperative, or a Majority-Controlled Producer-Based Business Venture must demonstrate that it is entering into an Emerging Market as a result of the Project. An Agricultural Producer Applicant type that has produced and marketed the Value-Added Agricultural Product for less than two (2) years must also demonstrate that it is entering an Emerging Market.

(f) *Citizenship.* An Applicant must certify that it is more than 50 percent owned by individuals who are either a citizen or national of a State or reside in the United States after legal admittance for permanent residence.

(g) *Multiple grants.* An Applicant must submit only one application in response to a solicitation and may have only one active VAPG award at any given time unless the Applicant is also applying as a member of a Farmer or Rancher Cooperative or an Agricultural Producer Group. In addition, the following restrictions apply:

(1) Applicants who have already received a Planning Grant for the Project cannot receive another Planning Grant for the same Project; and

(2) Applicants who have already received a Working Capital Grant for the Project cannot receive any additional grants for that Project.

(h) *Current VAPG award.* If an Applicant has a current VAPG award at the time of subsequent competition, the Applicant must exhaust all VAPG award funds and submit final financial and performance reports to the Agency by

the application submission deadline for the subsequent VAPG competition. If VAPG award funds will not be spent by the subsequent VAPG application submission deadline, the Applicant must request a cancellation of the current VAPG award prior to the subsequent application submission deadline.

§ 4284.921 Ineligible Applicants.

Applicants are ineligible for assistance through this program if one or more of the following has occurred:

(a) The Applicant is debarred or suspended or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(b) An outstanding judgement has been obtained against the Applicant by the United States in a Federal court (other than U.S. Tax Court).

(c) The Applicant is delinquent on the payment of Federal income taxes or is delinquent on Federal debt.

(d) The Applicant has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(e) The Applicant has unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(f) The Applicant submits multiple applications from separate entities, owners, and/or owner(s) of the legal entity (regardless of ownership percentage), or from a parent, subsidiary or affiliated organization (with "affiliation" defined by the Small Business Administration regulation 13 CFR 121.103, or successor regulation) during the same grant cycle. This is not applicable to Applicants who are also applying as a member of a Farmer or Rancher Cooperative or an Agricultural Producer Group.

§ 4284.922 Project eligibility.

Eligible Projects must meet all of the following requirements. Failure to meet one or more of these requirements means that the application will not be eligible for funding.

(a) *Project focus.* The Project must focus on allowable Planning or Working Capital Grant activities as described at § 4284.925, as applicable, with eligible tasks directly related to the processing and/or marketing of the subject Value-Added Agricultural Product.

(b) *Project type.* The Project must fit one of the following purposes:

(1) Emerging Market Project as defined in § 4284.903.

(2) Market Expansion Project as defined in § 4284.903.

(3) Food Safety Project as defined in § 4284.903.

(c) *Product(s).* Each product that is the subject of the Project must meet the definition of a Value-Added Agricultural Product. The Applicant must be currently producing the Agricultural Commodity for each Value-Added Agricultural Product that is the subject of the Project. All Applicants seeking Working Capital Grant funds must also be marketing the subject Value-Added Agricultural Product(s) or ready to implement the Working Capital Grant activities in accord with the budget and work plan timeline.

(d) *Amount requested.* The amount requested must not exceed any maximum amounts specified in the annual notification issued on the program website, per § 4284.930.

(e) *Period of Performance.* The Period of Performance cannot exceed three (3) years.

(f) *Matching Funds.* Matching Funds must come from eligible sources without a real or apparent conflict of interest and be used for eligible Project expenses during the Period of Performance. Matching Funds must be confirmed and provided in the form of:

(1) Applicant or third-party cash;

(2) Applicant loan, or line of credit;

(3) Non-Federal grant sources (unless otherwise provided by law); or

(4) Applicant, family member, or third-party in-kind contribution.

(i) In-kind contributions must be appropriately valued with an adequate explanation of the basis for the valuation (e.g., reference comparable market values, salary and wage data, expertise or experience of the contributor, per unit costs, industry norms).

(ii) Applicant in-kind contributions may include the value of the Agricultural Commodity inventory to be used in the Project and can be used to satisfy up to 100 percent of the Matching Funds requirement. Third-party in-kind contributions of the Agricultural Commodity inventory to be used in the Project can be used to satisfy up to 49 percent of the Matching Funds requirement.

(iii) Applicant in-kind contributions may also include Applicant or family time spent on eligible tasks; however, the valuation cannot exceed 50 percent of the Matching Funds required for the Project. Final valuation for Applicant or family member in-kind contributions is at the discretion of the Agency.

§ 4284.923 Reserved funds eligibility.

Applicants must meet the applicable requirements in this section to compete for reserved funds.

(a) *Beginning Farmer or Rancher.* Applicants must demonstrate that they meet the definition of a Beginning Farmer or Rancher. The Applicant must self-certify that more than 50 percent of its owners are a Beginning Farmer or Rancher.

(b) *Socially-Disadvantaged Farmer or Rancher.* Applicants must demonstrate that an individual or individuals that qualify as a Socially-Disadvantaged Farmer or Rancher own more than 50 percent of the Applicant Farm or Ranch organization. Applicants must provide a self-certification from the individual owner(s) indicating they are a member of a Socially-Disadvantaged Group.

(c) *Food Safety.* If the Applicant is applying for Food Safety reserved funds, the Applicant must describe the need or requirement for training, certifications, and/or supplies and equipment. This reserve is for Applicants where more than 50 percent of the Project Cost is for post-harvest Food Safety purposes related to the processing and/or marketing of a Value-Added Agricultural Product.

(d) *Mid-Tier Value Chain.* The Applicant must:

(1) Provide documentation demonstrating that the Project meets the definition of Mid-Tier Value Chain;

(2) Demonstrate that the Project proposes development of a Local or Regional Supply Network of an interconnected group of entities (including nonprofit organizations, as appropriate) through which Agricultural Commodities and Value-Added Agricultural Products move from production through consumption in a local or regional area of a State, including a description of the network, its component members, either by name or by class, and its purpose. Applicant ownership of the Agricultural Commodity and Value-Added Agricultural Product from raw through value-added stages is not necessarily required;

(3) Describe at least two alliances, linkages, or partnerships within the value chain that link Agricultural Producers with businesses, cooperatives, or consumers that market value-added Agricultural Commodities or Value-Added Agricultural Products in a manner that benefits Small- or Medium-Sized Farms and Ranches that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(4) Demonstrate how the Project, due to the manner in which the Value-

Added Agricultural Product is marketed, will increase the profitability and competitiveness of at least two eligible, Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm, including a description of the two Farms or Ranches confirming they meet the Family Farm definition;

(5) Document that the eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture Applicant organization has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible Agricultural Producer Applicant has obtained at least one agreement from an eligible Agricultural Producer Group/Farmer or Rancher Cooperative/Majority-Controlled Producer-Based Business Venture engaged in the value-chain on a marketing strategy;

(i) For Planning Grants, agreements may include letters of commitment or intent to partner on marketing, distribution or processing; and should include the names of the parties with a description of the nature of their collaboration. For Working Capital Grants, demonstration of the actual existence of the executed agreements is required; and

(ii) Agricultural Producer Applicants must provide documentation to confirm that the non-Applicant Agricultural Producer Group/Farmer or Rancher Cooperative/majority-controlled partnering entity meets program eligibility definitions, except that, in this context, the partnering entity does not need to supply any of the Agricultural Commodity for the Project;

(6) Demonstrate that the members of the Applicant organization that are benefiting from the Project currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product that is the subject of the Project; and

(7) Demonstrate that the Project will result in an increase in customer base and an increase in revenue returns to the Applicant Producers supplying more than 50 percent of the Agricultural Commodity for the Project.

§ 4284.924 Priority points eligibility.

Applicants that demonstrate eligibility may apply for priority points if their applications: propose Projects that contribute to increasing opportunities for Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, Veteran Farmers or Ranchers, or operators of Small- or Medium-Sized Farms or Ranches that

are structured as a Family Farm or propose Mid-Tier Value Chain Projects; or are a Farmer or Rancher Cooperative. A Harvester is eligible for priority points only if the Harvester is proposing a Mid-Tier Value Chain Project.

(a) Applicants seeking priority points as Beginning Farmers or Ranchers or as Socially Disadvantaged Farmers or Ranchers must provide certifications specified in § 4284.923(a) or (b), as applicable.

(b) Applicants seeking priority points as Veteran Farmers or Ranchers must provide a self-certification that they meet the definition of a Veteran Farmer or Rancher.

(c) Applicants seeking priority points as operators of Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm must provide a self-certification that they meet the definition of a Small- or Medium-Sized Farm or Ranch that is structured as a Family Farm; that the owners meet the definition of Immediate Family and are primarily responsible for the daily physical labor and management of the Farm or Ranch with hired help merely supplementing the family labor.

(d) Applicants seeking priority points for Mid-Tier Value Chain Projects must be one of the four eligible Applicant types and provide the documentation specified in § 4284.923(d)(1) through (7), demonstrating that the Project meets the Mid-Tier Value Chain definition.

(e) Applicants seeking priority points for a Farmer or Rancher Cooperative must:

(1) Demonstrate that it is a business owned and controlled by Agricultural Producers that is legally incorporated as a cooperative; or that it is a business owned and controlled by Agricultural Producers that is not legally incorporated as a cooperative, but is identified by the State in which it operates as a cooperatively operated business;

(2) Identify by name or class, and confirm that the Agricultural Producers on whose behalf the value-added work will be done meet the definition requirements for an Agricultural Producer, including that each member is an individual Agricultural Producer, or an entity that is solely owned and controlled by Agricultural Producers, that substantially participates in the production of more than 50 percent of the Agricultural Commodity to which value will be added; and

(3) Provide a self-certification statement that the entity is owned and controlled by Agricultural Producers that are incorporated, or otherwise identified by the State in which they operate, as a cooperatively owned

business(es); that the owner(s)/ member(s) substantially participate in the production of more than 50 percent of the Agricultural Commodity to which value will be added; is in “good standing” as a cooperatively operated business in the State of incorporation or operations, as applicable.

(f) Applicants applying as Agricultural Producer Groups, Farmer or Rancher Cooperatives, or Majority-Controlled Producer-Based Business Ventures (group Applicants) may request additional priority points for Projects that “best contribute to creating or increasing marketing opportunities” for operators of Small- and Medium-Sized Farms and Ranches that are structured as Family Farms, Beginning Farmers and Ranchers, Socially-Disadvantaged Farmers and Ranchers, and Veteran Farmers and Ranchers. See § 4284.940(c)(6) for instructions and documentation requirements for group Applicants to apply for these additional priority points.

§ 4284.925 Allowable uses of grant and Matching Funds.

(a) *Planning grants.* Funds may only be used to pay a Qualified Consultant to conduct and develop a Feasibility Study, Business Plan, and/or Marketing Plan associated with the post-harvest processing and/or marketing of a Value-Added Agricultural Product.

(b) *Working capital grants.* Funds may be used to pay the Project’s eligible post-harvest operational costs directly related to the processing and/or marketing of the Value-Added Agricultural Product. Examples of eligible working capital expenses include purchasing a financial accounting system for the Project; paying salaries of employees (excluding owners and Immediate Family) to process and/or market and deliver the Value-Added Agricultural Product to consumers; paying for additional Agricultural Commodity inventory (less than 50 percent of the amount required for the Project) from an unaffiliated third party, necessary to produce the Value-Added Agricultural Product; paying for a marketing campaign for the Value-Added Agricultural Product; paying costs incurred in obtaining post-harvest Food Safety certification; and using up to \$6,500 of the amount of a grant to purchase or upgrade post-harvest Equipment to improve Food Safety.

§ 4284.926 Unallowable uses of grant and Matching Funds

(a) Unallowable uses of grant and Matching Funds awarded under this subpart include, but are not limited to:

(1) Support costs for services or goods going to or coming from a person or entity with a real or apparent conflict of interest, such as paying the salary of an Immediate Family member of a Recipient owner, employee, officer, or Agency, except as specifically noted for in-kind Matching Funds in § 4284.922;

(2) Pay costs for scenarios with noncompetitive trade practices;

(3) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(4) Purchase, lease purchase, or install fixed Equipment, including processing Equipment, except as specifically noted in § 4284.925(b);

(5) Purchase or repair vehicles, including boats;

(6) Pay for the preparation of the grant application;

(7) Pay expenses not directly related to the funded Project for the processing and marketing of the Value-Added Agricultural Product;

(8) Fund research and development;

(9) Fund any activities prohibited by 2 CFR parts 200 through 400, and 48 CFR part 31, subpart 31.2;

(10) Fund architectural or engineering design work;

(11) Fund expenses related to the production of any Agricultural Commodity or product, including, but not limited to production planning, purchase of seed or rootstock or other production inputs, labor for cultivation or harvesting crops, labor for repotting and/or maintenance of live plants, and delivery of Agricultural Commodity to a processing facility;

(12) Conduct activities on behalf of anyone other than a specifically identified Agricultural Producer or group of Agricultural Producers, as identified by name or class. The Agency considers conducting industry-level Feasibility Studies or Business Plans, that are also known as Feasibility Study templates or guides or Business Plan templates or guides, to be ineligible because the assistance is not provided to a specific group of Agricultural Producers;

(13) Duplicate activities charged to another Federal award or previous VAPG Planning or Working Capital Grant Project by an Applicant;

(14) Pay any costs of the Project incurred prior to the date of grant approval, including legal or other expenses needed to incorporate or organize a business;

(15) Pay any judgment or debt owed to the United States;

(16) Purchase or improve real property;

(17) Pay for costs associated with illegal activities;

(18) Purchase the Agricultural Commodity to which value will be added from the Applicant entity; Applicant-owned or related entity, or members of the Applicant entity;

(19) Use Planning Grant funds to evaluate the agricultural production of the commodity itself, or compensate Applicants or family members for participation in Feasibility Studies; or

(20) Indirect Costs.

(b) Applications that propose unallowable costs in excess of 10 percent of Project Costs will be deemed ineligible to compete for funds.

Applicants who submit applications containing ineligible expenses totaling less than 10 percent of Project Costs must remove those expenses from the Project budget or replace with eligible expenses, if selected for an award.

§ 4284.927 [Reserved]

§ 4284.928 Funding limitations.

(a) Grant funds may be used to pay up to 50 percent of the Project Costs, subject to the limitations established for the maximum total grant amount.

(b) The maximum grant amount provided to a Recipient in any one (1) year shall not exceed the amount announced in an annual notification issued on the program website pursuant to § 4284.930, but in no event may the total amount of grant funds provided to a grant Recipient exceed \$500,000.

(c) The aggregate amount of awards to Majority-Controlled Producer-Based Business Ventures may not exceed 10 percent of the total funds obligated under this subpart during any Fiscal Year.

(d) Not more than 2.5 percent of funds appropriated each year may be used to fund the Agricultural Marketing Resource Center, to support electronic capabilities to provide information regarding research, business, legal, financial, or logistical assistance to Agricultural Producers and processors.

§ 4284.929 [Reserved]

§ 4284.930 Notifications.

The Agency will issue any public notifications on the program website.

(a) *Amount of funding available.* The Agency will publish the amount of funding available for awards during each Fiscal Year within 30 calendar days of notification from OMB of the amount available.

(b) *Administrator/State Director points.* The Agency will publish the priority categories to be used for awarding Administrator or State Director points no later than the date the application period opens. Priority

categories may include any of the following:

(1) Unserved or underserved areas;

(2) Geographic diversity;

(3) Emergency conditions; or

(4) Priority Department and mission area priorities, goals, and objectives.

(c) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

§ 4284.931 Application requirements.

All applications must include the following items:

(a) *Application forms.* The application must include the following forms (or their successor) and any additional forms listed in the annual notification for the program.

(1) *SF-424, "Application for Federal Assistance."* This form must be filled out completely and signed by an authorized representative of the Applicant organization.

(2) *SF-424A, "Budget Information-Non-Construction Programs."* This form must be filled out completely.

(b) *Executive summary.* Applications must include a one-page executive summary containing the legal name of the Applicant entity, application type (Planning or Working Capital Grant), Applicant type, amount of grant request, a Project summary, whether a simplified application is being submitted, and must explicitly state whether reserved funds are being requested.

(c) *Eligibility discussion.* The Applicant must discuss how:

(1) Applicant eligibility requirements in § 4284.920 are met;

(2) Project eligibility requirements in § 4284.922 are met; and

(3) Allowable use of grant and Matching Funds requirements in § 4284.925 are met.

(d) *Proposal evaluation criteria.*

Applicants for both Planning and Working Capital Grants must address each proposal evaluation criterion identified in § 4284.940 in narrative form.

(e) *Certification of Matching Funds.* Applicants must certify that:

(1) Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds disbursed, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement; and

(2) If Matching Funds are proposed in an amount exceeding the grant amount, those Matching Funds must be spent at a proportional rate equal to the match-to-grant ratio identified in the budget.

(f) *Reserved funds/priority points documentation.* Applicants must

identify their priority category, as applicable, and provide the required supporting documentation indicated in §§ 4284.923 and 4284.924 for that category to demonstrate eligibility.

(g) *Business Plan*. For Working Capital Grant applications, Applicants must provide a copy of the Business Plan that was completed for the value-added Project, except as provided for in § 4284.932. The Agency must concur in the acceptability or adequacy of the Business Plan.

(h) *Feasibility Study*. Applicants for Working Capital Grants must provide a copy of a Feasibility Study prepared by a Qualified Consultant that was completed for the value-added Project, except as provided for at § 4284.932. The name and credentials of the Qualified Consultant must be provided along with the date the Feasibility Study was completed. The Feasibility Study must demonstrate a viable Project with a likelihood of success and be a thorough assessment of the practicality of the Project. The thorough assessment must include an analysis of the proposed Project that discusses its strengths and weaknesses, potential opportunities and threats, and resources required to carry it out. The Agency must concur in the acceptability or adequacy of the Feasibility Study and whether the Qualified Consultant who prepared the Feasibility Study possesses the necessary knowledge, expertise, and experience.

(i) *Customer Base and Revenue Increase Metrics*. Applicants must include a discussion on how their Project will result in an expanded market to new customers and increased revenue to the Agricultural Producer Applicant. Working Capital Grant Applicants must also provide estimates for increases in customer base and revenue returns and must include a description of the direct or indirect producer or food business benefits intended by the eligible entity to result from the proposed Project within a reasonable period of time after the receipt of a grant.

§ 4284.932 Simplified application.

Applicants that will submit an application where paragraphs (a), (b), and/or (c) of this section apply may submit a simplified application, which means submission of a Feasibility Study or Business Plan for the Project is not required. The waiver of the requirement to submit a Feasibility Study and Business Plan does not change the proposal evaluation or scoring criteria that pertain to issues that might be supported by a Feasibility Study or Business Plan, so Applicants are

encouraged to thoroughly document applications with their Project plans and expectations for success. All other eligibility requirements remain the same.

(a) *Working Capital Grant request of less than \$50,000*. Applicants requesting less than \$50,000 may submit a Market Expansion or Emerging Market simplified application. These types of applications must provide adequate documentation to demonstrate the expected increases in customer base and revenues resulting from the Project that will benefit the Applicant(s) supplying more than 50 percent of the Agricultural Commodity for the Project.

(b) *Market Expansion request of \$50,000 or more*. Agricultural Producers who can demonstrate that their Project meets the definition of Market Expansion, may submit a simplified application. Applicants must submit a Marketing Plan with their simplified application. However, a Business Plan may be submitted in lieu of a Marketing Plan. Agricultural Producer Group, Farmer or Rancher Cooperative, and Majority-Controlled Producer-Based Business Venture applicant types are not eligible for Market Expansion Projects.

(c) *Food Safety*. Applicants that will submit an application where more than 50 percent of the Project Costs will be used for post-harvest Food Safety purposes related to the processing and/or marketing of a Value-Added Agricultural Product may submit a simplified application.

§ 4284.933 Submission requirements.

Unless otherwise specified in a notification issued under § 4284.930, the following requirements apply to all applications.

(a) *Submission period*. (1) The application period opens November 1. Applications received prior to the opening date in a given Fiscal Year will automatically be considered ineligible and will not be evaluated further.

(2) The application period closes on February 15. Applications received after the closing date will not be considered for funding. Thus, applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency. Revisions or additional information will not be accepted after the application period closes on February 15.

(b) *Submission process*. All items required for the application must be submitted in a single application. No attachments other than the required items will be considered. Incomplete applications will automatically be considered ineligible and will not be

evaluated further. The annual notification for the program will be published on the OMB-designated governmentwide website and will provide instructions on how and where to submit completed applications for VAPG funding.

§§ 4284.934–4284.939 [Reserved]

§ 4284.940 Application processing.

(a) *Eligibility evaluation*. The Agency will review all applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. An application must include all application requirements identified in § 4284.931, or the Agency will determine that it is not eligible for assistance.

(b) *Risk evaluation*. (1) The Agency will review those applications that are determined to be eligible for the program for risk based on the following information. Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award. However, if risk evaluation findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is not eligible for funding.

(2) The Agency will determine if the Applicant has satisfactory performance for all Federal awards received in the last five (5) years, based upon review of deficiencies reported in the Federal Awardee Performance and Integrity Information System, or its successor system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds.

(c) *Merit evaluation*. The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The maximum number of points that will be awarded to an application is 100 points. The Agency's annual notification will provide additional instructions to assist Applicants when responding to the criteria in paragraphs (c)(1) through (7) of this section. The merit evaluation will be based on the following criteria, but may be amended at the Agency's discretion:

(1) *Nature of the proposed venture (0 to 30 points)*. Applicants must describe the technological feasibility, operational

efficiency, and profitability and economic sustainability of the Project. Applications that demonstrate a high likelihood of success in these areas will receive higher points. In response to this criterion, Working Capital Grant Applicants must provide accurate and factual information for the Project that demonstrates a viable Project ready to be implemented upon award. Planning Grant Applicants only need to discuss anticipated needs and expected outcomes for the Project.

(i) Technological feasibility should include discussion of the value-added process; the Applicant's expectations for sufficient Agricultural Commodity as well as the value to be added to the Agricultural Commodity through the value-added process; potential markets and distribution channels; Applicant's experience in marketing the proposed or similar product; and any other relevant information that supports the feasibility of the Project.

(ii) Operational efficiency should include discussion of the cost of inputs; cost of processing commodity; sufficient labor and expertise; use of own facility, shared space, or contracted processing; adequate processing equipment; and logistics for storage, distribution, transportation, and/or shipping of the Value-Added Agricultural Product. Applicants should also address any anticipated challenges or risks associated with the Project.

(iii) Profitability and economic sustainability should include discussion of the market expansion strategy and break-even point analysis completed for the Project. Include a summary of historical financial and pro forma financial projections, as applicable, to support the viability of the Project. Other relevant sources such as a Business Plan or Feasibility Study may be cross-referenced.

(2) *Qualifications of Key Personnel (0 to 20 points)*. Applicants must provide the qualifications and expertise of all identified Key Personnel. If staff or consultants have not been hired at the time of application, Applicants must provide specific descriptions of the qualifications required for the positions to be filled. Applications that demonstrate Key Personnel with strong credentials will receive higher points.

(3) *Work plan and budget (0 to 20 points)*. Applicants must submit a comprehensive work plan and budget. Applications that provide a clear, comprehensive work plan detailing all Project goals, tasks, timelines, costs, and Key Personnel in a logical and realistic manner demonstrating a high likelihood of success will receive higher points. The Project work plan and budget must

demonstrate eligible sources and allowable uses of funds and must:

(i) Present a detailed narrative description of the eligible activities and tasks related to the processing and/or marketing of the Value-Added Agricultural Product along with a detailed breakdown of all estimated costs allocated to those activities and tasks;

(ii) Identify the Key Personnel that will be responsible for overseeing and/or completing the activities or tasks and provide reasonable and specific timeframes for completion of the activities and tasks;

(iii) Identify the sources and uses of grant and Matching Funds for all activities and tasks specified in the budget; and indicate that Matching Funds will be spent at a rate equal to or in advance of grant funds; and

(iv) Identify the basis of the valuation of the grant and Matching Funds for all activities and tasks specified in the budget.

(4) *Matching Funds commitment (up to 5 points)*. Applications that demonstrate financial commitment in the form of cash matching contributions will receive more points. Applications with a higher percentage of cash match will receive more points.

(5) *Prior VAPG assistance (up to 5 points)*. The Applicant must disclose the number of prior VAPG awards they have received. Applicants that have not received a VAPG award will receive more points.

(6) *Priority points (0 to 10 points)*. Priority points may be awarded in both the general funds and the reserved funds competitions. Points will be awarded as follows:

(i) 5 priority points will be awarded if the Applicant meets the requirements for one of the following categories and provides the documentation described in §§ 4284.923 and 4284.924, as applicable: Beginning Farmer or Rancher, Socially-Disadvantaged Farmer or Rancher, Veteran Farmer or Rancher, or operator of a Small- or Medium-Sized Farm or Ranch that is structured as a Family Farm, Farmer or Rancher Cooperative, or are proposing a Mid-Tier Value Chain Project. Applicants will not be awarded more than five (5) points even if they qualify for more than one of the priority categories.

(ii) 5 additional priority points will be awarded if the Applicant is an Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture whose Project "best contributes to creating or increasing marketing opportunities" for operators of Small- and Medium-Sized Farms or Ranches

that are structured as Family Farms, Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, or Veteran Farmers or Ranchers.

(7) *Administrator/State Director priority categories (0 to 10 points)*. Unless otherwise specified in a notification issued under § 4284.930, the Administrator of the Agency or State Director has discretion to award up to 10 points to an application to improve the geographic diversity of recipients in a Fiscal Year, fund unserved or underserved areas, assist areas experiencing emergency conditions, or prioritize Projects that advance the Department or Agency's key priorities, goals, and objectives. In the event of a national competition, the Administrator will award points and for a State-allocated competition, the State Director will award points.

§ 4284.941 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency if the Project is no longer viable or the Applicant is no longer requesting financial assistance for the Project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.942–4284.949 [Reserved]

§ 4284.950 Award selection.

(a) Applications will be selected for further processing and consideration of an award after the merit evaluation process is completed for all eligible applications. Each eligible application will be scored on criteria 1 through 6 as detailed in the annual notification. The scores will be ranked highest to lowest and this will comprise the initial application ranking. Applications will be ranked solely on the points awarded by the reviewers, unless there is a tie. In that case, the Administrator of the Agency (or State Director) will break the tie at his or her discretion based on evaluation criterion 7.

(b) Applications for reserved funds will be funded in rank order until funds are depleted. Unfunded reserve applications will then compete for general funds where applications will be funded in rank order until available funds are expended or the minimum score for funding of 50 points is reached. Funding for Majority Controlled Producer-Based Business Ventures is limited to 10 percent of total grant funds expected to be obligated each funding cycle. These applications

will be funded in rank order until the funding limitation has been reached.

(c) If an application cannot be fully funded, the Agency will offer partial funding to the extent funds are available. If the Applicant offered partial funding does not accept, the Agency will offer the funding to the next highest-ranked Applicant until an Applicant is found that accepts the funding or no additional eligible Applicants exist. If an application is ranked and not funded, it will not be carried forward into the next Fiscal Year competition.

§ 4284.951 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the term of the award. Applicants receiving a Letter of Conditions will have up to 90 calendar days to meet the conditions of the award. If the Applicant agrees with the conditions, the Applicant must complete an applicable Form RD 1942–46, Letter of Intent to Meet Conditions. If the Applicant believes that certain conditions cannot be met, the Applicant may propose alternate conditions to the Agency. The Agency must concur with any proposed changes to the Letter of Conditions by the Applicant before the application will be processed further. If the Agency agrees to any proposed changes, the Agency will issue a revised or amended Letter of Conditions that defines the final conditions under which the grant will be made. However, if an Applicant does not meet the conditions, the Agency will discontinue processing the application.

(b) All successful Applicants must complete the following additional forms and provide the following additional documentation:

(1) *Form RD 1942–46, “Letter of Intent to Meet Conditions.”* Completion of this form confirms the Applicant’s commitment to meeting the conditions of the award.

(2) *Form RD 400–4, “Assurance Agreement.”* Completion of this form confirms the Applicant’s commitment to complying with Federal laws and policies regarding prohibition of discrimination.

(3) *Form SF–LLL, “Disclosure of Lobbying Activities.”* Completion of this form is only required for those entities that engage in lobbying activities.

(4) *Form RD 4280–2, “Rural Business-Cooperative Service Financial Assistance Agreement.”* This form must be filled out completely and signed by

an authorized representative of the Applicant organization and an authorized representative from the Agency for the grant award to be considered a valid agreement between the parties.

(5) *Performance evaluation criteria.* The overall goal of this program and the Projects it supports is to create and serve new markets, with a resulting increase in jobs, customer base and revenues returning to the Producer. Specific information must be provided about plans to track and evaluate progress toward these outcomes as a way for the Agency to determine whether or not the primary program goals and Project goals included in the work plan are likely to be accomplished during the Period of Performance as specified in § 4284.960.

(6) *Verification of Matching Funds.* Provide authentic documentation from the source to confirm the eligibility and availability of both cash and in-kind contributions that meet the requirements for Matching Funds in § 4284.922.

(7) *Valid permit/license.* If the Project will produce and market a Value-Added Agricultural Product in the industries of wine, beer, distilled spirits or other alcoholic merchandise, a valid TTB Permit must be provided. If the Project will market a Value-Added Agricultural Product made from hemp, a copy of a valid producer license issued by a State, Tribe, or USDA must be provided, as applicable in accordance with 7 CFR part 990. If the Applicant applied as a Harvester, the Applicant must provide executed copies of contracts, licensing or equivalent documentation establishing “legal rights” to access and harvest the subject Agricultural Commodity.

(8) *Organizational documents.* Provide a copy of Applicant’s organizational documents that demonstrate legal authority and good standing such as by-laws, articles of incorporation or organization, and Letter or Certificate of Good Standing from your Secretary of State or equivalent agency. Sole Proprietors must submit a copy of their IRS tax forms showing farm income.

§ 4284.952 Notification of unsuccessful Applicants.

Applicants whose applications are not eligible for financial assistance or did not score high enough to be funded will be notified. The notification will be in writing using an adverse decision letter. This letter will outline the reason(s) for the Agency’s decision and provide dispute resolution alternatives.

§§ 4284.953–4284.959 [Reserved]

§ 4284.960 Reporting requirements.

Recipients are required to submit financial reports and performance reports on a semiannual basis. Semiannual periods end on March 31st and September 30th. Reports are due 30 calendar days after the end of the semiannual period. A final financial report and performance report must also be submitted within 120 days after the expiration or termination of the grant. Failure to submit a performance report within the specified timeframes may result in the Agency withholding grant funds.

(a) *Financial reports.* Form SF–425, “Federal Financial Report,” must be used for financial reporting. Financial reports must also include evidence of receipt of Matching Funds. Recipients must complete the Project per the terms and conditions specified in the approved work plan and budget, the Financial Assistance Agreement, and Letter of Conditions. Recipients will expend funds only for eligible purposes and will be monitored by the Agency for compliance. Recipients must maintain a financial management system and property and procurement standards in accordance with 2 CFR parts 400 through 499.

(b) *Performance reports.* All performance reports must include a discussion on the performance benchmarks suggested in the application to determine whether the primary goals and objectives proposed in the approved work plan and budget were accomplished during the reporting period. In the section of the report that compares actual accomplishments to the objectives for that reporting period, objectives should be reported by specific task breakdown as described in the approved work plan and budget.

(1) For Working Capital Grant Projects, final performance reports must include the following metrics:

(i) Expansion of customer base as a result of the Project;

(ii) Increased revenue returned to the Producer as a result of the Project; and

(iii) Jobs created or saved as a result of the Project.

(2) For all Projects, we may request additional information, including but not limited to, the following:

(i) Information that will enable evaluation of the economic impact of program awards, such as:

(A) Business starts and clients served; and

(B) Data associated with Producer market expansion, new market penetration, and changes in customer base or revenues.

(ii) Information that would promote greater understanding of the key determinants of the success of individual Projects or inform program administration and evaluation, such as:

(A) The Producer's experience related to financial management, budgeting, and running a business enterprise;

(B) The nature of, and advantages or disadvantages of, supply chain arrangements or equitable distribution of rewards and responsibilities for Mid-Tier Value Chain Projects; and

(C) Recommendations from Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers or Ranchers, and/or Veteran Farmers or Ranchers.

(iii) Information that would inform or enable the aggregation of data for program administration or evaluation purposes.

(3) If any special conditions have been placed on the use of award funds, compliance with those conditions must be discussed in each performance report.

§ 4284.961 Grant monitoring.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.908 for more information). The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting, documentation, or for failure to comply with Agency requirements.

§ 4284.962 Transfer of obligations.

At the discretion of the Agency and on a case-by-case basis, an obligation of funds established for an Applicant may be transferred to a different (substituted) Applicant provided:

(a) The substituted Applicant:

- (1) Is eligible;
- (2) Has a close and genuine relationship with the original Applicant; and
- (3) Has the authority to receive the assistance approved for the original Applicant.

(b) The Project continues to meet all product, purpose, and reserved funds eligibility requirements so that the need, purpose(s), and scope of the Project for which the Agency funds will be used remain substantially unchanged.

§§ 4284.963–4284.999 [Reserved]

§ 4284.1000 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by the OMB and have been assigned OMB control number 0570–0064 in accordance with the Paperwork Reduction Act of 1995.

■ 5. Revise subpart K to read as follows:

Subpart K—Agriculture Innovation Center Demonstration Program

Sec.

General Information

- 4284.1001 Purpose.
- 4284.1002 Organization of subpart.
- 4284.1003 Definitions.
- 4284.1004 Exception authority.
- 4284.1005 [Reserved]
- 4284.1006 Conflict of interest.
- 4284.1007 [Reserved]
- 4284.1008 Compliance with other laws and regulations.
- 4284.1009–4284.1019 [Reserved]

Eligibility Information

- 4284.1020 Applicant eligibility.
- 4284.1021 Ultimate beneficiary eligibility.
- 4284.1022 Project eligibility.
- 4284.1023–4284.1024 [Reserved]
- 4284.1025 Use of funds.
- 4284.1026–4284.1029 [Reserved]
- 4284.1030 Notifications.

Application Requirements

- 4284.1031 Application requirements.
- 4284.1032 [Reserved]
- 4284.1033 Submission requirements.
- 4284.1034–4284.1039 [Reserved]

Application Processing

- 4284.1040 Application processing.
- 4284.1041 Application withdrawal.
- 4284.1042–4284.1049 [Reserved]

Award

- 4284.1050 Award selection.
- 4284.1051 Notification of successful Applicants.
- 4284.1052 Notification of unsuccessful Applicants.
- 4284.1053 Award approval.
- 4284.1054–4284.1059 [Reserved]

Post-Award

- 4284.1060 Reporting requirements.
- 4284.1061 Monitoring awards.

Other

- 4284.1062–4284.1099 [Reserved]
- 4284.1100 OMB control number.

General Information

§ 4284.1001 Purpose.

This subpart implements the Agriculture Innovation Center Demonstration (AIC) program. Through the AIC program, the Agency makes grants to Centers that provide Producer Services to Agricultural Producers seeking to develop and market Value-Added Agricultural Products.

§ 4284.1002 Organization of subpart.

The information in this subpart is organized into seven main topics:

(a) *General information.* Sections 4284.1001 through 4284.1019 discuss the purpose of the program, definitions, exception authority, conflict of interest, and compliance with other laws and regulations.

(b) *Eligibility information.* Sections 4284.1020 through 4284.1029 discuss the eligibility requirements for the program. These sections include information on applicant eligibility, project eligibility, and the use of funds. See § 4284.1022 for information about the award amounts, Period of Performance, and Matching Funds requirements.

(c) *Application requirements information.* Sections 4284.1030 through 4284.1039 discuss the requirements for submitting an application. These sections include information on what forms and other information are required for a complete application as well as the format of the application, the application deadline, and how to submit the application.

(d) *Application processing information.* Sections 4284.1040 through 4284.1049 discuss how the Agency will process applications. These sections include information on how applications will be reviewed for eligibility, how applications will be evaluated for merit, and how an applicant can withdraw an application from consideration.

(e) *Award information.* Sections 4284.1050 through 4284.1059 discuss how the Agency will make awards. These sections include information about how applications will be selected for funding, how applicants will be notified whether their applications have been selected for funding, how applicants can resolve disputes regarding funding selections, and the requirements for an applicant to accept an award and be approved as a Recipient of an award.

(f) *Post-award information.* Sections 4284.1060 through 4284.1061 discuss the reporting requirements for Recipients after an award is approved as well as monitoring procedures that the Agency will use.

(g) *Other.* (1) Sections 4284.1062 through 4284.1099 are reserved.

(2) Section 4284.1100 includes the Office of Management and Budget (OMB) control number for reporting and recordkeeping requirements under this subpart.

§ 4284.1003 Definitions.

These are the definitions for terms used in this subpart. Additional terms used in this subpart are found in the applicable laws and regulations, in particular 2 CFR part 200 and 7 CFR part 11.

Adverse Decision has the meaning located at 7 CFR 11.1.

Adverse Decision Letter means a letter issued by the Agency to the Applicant

or Recipient that explains the Adverse Decision.

Agency means the Rural Business-Cooperative Service (RBCS or the Agency), an agency of the United States Department of Agriculture (USDA), or a successor agency.

Agricultural Commodity has the meaning located at § 4284.903.

Agricultural Commodity Organization means an organization that exclusively represents a single Agricultural Commodity or group of similar commodities either on behalf of the commodity itself or on behalf of the Agricultural Producers who grow or raise it. The representation can be at a local, State, regional, or national level. Examples are Agricultural Commodity Marketing Boards established by States, a national association representing corn growers, and a regional association representing fruit and vegetable growers.

Agricultural Food Product has the meaning located at § 4284.903.

Agricultural Producer has the meaning located at § 4284.903.

Applicant means the entity that is applying for funding through the AIC program.

Board of Directors means the group of individuals who govern the Center.

Business Plan has the meaning located at § 4284.903.

Center means the Agriculture Innovation Center to be established and operated by a Recipient of the AIC program. It must be governed by a Qualified Board of Directors.

Change in Physical State has the meaning located at § 4284.903.

Commercial Organization means any business that sells goods or services for the purpose of making a profit.

Equipment has the meaning located at 2 CFR 200.1.

Family Farm has the meaning located at § 4284.903.

Farm or Ranch has the meaning located at § 4284.903.

Farm- or Ranch-Based Renewable Energy has the meaning located at § 4284.903.

Feasibility Study has the meaning located at § 4284.903.

Federal Award has the meaning located at 2 CFR 200.1.

Financial Assistance Agreement means Form RD 4280–2 and any attachments, as executed by RBCS and the Recipient.

General Agricultural Organization means an organization that represents agriculture in general, without restriction to any specific group, commodity, or sector. The sole purpose of the organization must be representing agriculture through policymaking,

education, and/or marketing. The organization must represent Agricultural Producers, although it may represent processors and other stakeholders as well. The representation can occur at the State, regional, or national level. Examples include organizations that represent farmers and ranchers and organizations that represent organic or sustainable farming. Note that credit organizations are not included in this definition.

Harvester has the meaning located at § 4284.903.

Indian Tribe has the meaning located at 2 CFR 200.1.

Indirect Costs has the meaning located at 2 CFR 200.1.

Institutions of Higher Education has the meaning located at 2 CFR 200.1.

Key Personnel means the employees and/or contractors of the Center who provide Producer Services. It also includes the Project Director.

Letter of Conditions means the letter that the Agency issues to an entity whose application is selected for funding. The letter outlines all the conditions of the award that must be met before the award can be approved. Other agencies may call this letter an award letter or award notice.

Local Government has the meaning located at 2 CFR 200.1.

Local Agricultural Producer means an Agricultural Producer located within 400 miles of the Center or in the same State.

Locally-Produced Agricultural Food Product has the meaning located at § 4284.903.

Matching Funds has the meaning located at 2 CFR 200.1.

Nonprofit Organization has the meaning located at 2 CFR 200.1.

Period of Performance has the meaning located at 2 CFR 200.1.

Physical Segregation has the meaning located at § 4284.903.

Produced in a Manner That Enhances the Value of the Agricultural Commodity has the meaning located at § 4284.903.

Producer Services means services provided by the Centers to Agricultural Producers seeking to develop and market Value-Added Agricultural Products. The services provided must directly assist the Agricultural Producer with the process of developing and/or marketing a Value-Added Agricultural Product. The services include the following:

(1) Business development services, such as Feasibility Studies, Business Plans, and other types of technical assistance that supports business development.

(2) Market development services, such as marketing plans, branding, and customer identification.

(3) Organizational assistance, such as legal and technical advisory services related to the development, expansion, or operation of a business.

(4) Financial advisory services related to the development, expansion, or operation of a business, such as assistance with obtaining credit for operating costs, training on using financial management software, and guidance on use of cash flow.

(5) Process development services, such as the following:

(i) Engineering services, including scale-up of production systems (not to include cost of renovating or constructing a facility or system);

(ii) Scale production assessments, which are studies that analyze processing facilities to determine the size that optimizes construction and other cost efficiencies associated with manufacturing or processing a Value-Added Agricultural Product;

(iii) Systems development; and

(iv) Other technical assistance and applied research related to development, implementation, improvement and operations of processes and systems to develop and market a Value-Added Agricultural Product.

(6) Product development, such as idea generation, concept testing, feasibility and cost analysis, product taste-testing, demographic and other types of consumer analysis, production analysis, recipe development, evaluation of packaging and labeling options, and brand development for a Value-Added Agricultural Product.

(7) Value chain coordination, or directly working with an Agricultural Producer to connect that producer to a distribution system, processing facility, or commercial kitchen.

(8) Grants to Agricultural Producers for the services in paragraphs (1) through (7) of this definition, where the individual award does not exceed \$5,000 and the aggregate amount of grants made by the Center does not exceed \$50,000. Note that these grants are considered pass-through awards. Therefore, Centers and subrecipients must comply with all Federal and programmatic requirements for pass-through entities and awards, as described in 2 CFR part 200. Additionally, subrecipients of these grants must be eligible to receive a Federal Award, use grant and Matching Funds for allowable costs, provide at least one-third of the Project Cost in Matching Funds, and meet all other

Federal and program requirements for the AIC program.

Program Income has the meaning located at 2 CFR 200.1.

Project Cost has the meaning located at 2 CFR 200.1.

Qualified Board of Directors means a Board of Directors that includes, but is not limited to, representatives from each of the groups identified in paragraphs (1) through (3) of this definition. It should be noted that no representative may represent more than one group or organization and Board of Director representatives must not have any conflicts of interest. See § 4284.1006 for additional information on conflicts of interest.

(1) Two General Agricultural Organizations with the greatest number of members in the State in which the Center is located;

(2) The department of agriculture, or similar State department or agency, or a State legislator, of the State in which the Center is located; and

(3) Four Agricultural Commodity Organizations representing different Agricultural Commodities produced in the State in which the Center is located.

Real Property has the meaning located at 2 CFR 200.1.

Recipient has the meaning located at 2 CFR 200.1.

State has the meaning located at 2 CFR 200.1.

State Office means the USDA Rural Development (RD) offices located in each State.

Third-Party In-Kind Contributions has the meaning located at 2 CFR 200.1.

Underserved and Economically Distressed Area means an area so designated on the program website.

Value-Added Agricultural Product has the meaning located at § 4284.903.

§ 4284.1004 Exception authority.

The Administrator of the Agency may, on a case-by-case basis, approve an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot conflict with applicable laws.

§ 4284.1005 [Reserved]

§ 4284.1006 Conflict of interest.

No conflict of interest or appearance of a conflict of interest will be allowed.

(a) *Description.* A conflict of interest occurs in a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or entity to act impartially. For the purposes of this subpart, relationships that can

include conflict of interest include, but are not limited to:

(1) Parent, Applicant, or Recipient Board of Directors, employees, consultants, and contractors.

(2) Center Board of Directors, employees, consultants, and contractors.

(3) Subrecipients and their employees, consultants, and contractors.

(4) Immediate family members of those listed in paragraphs (a)(1) through (3) of this section.

(b) *State Departments of Agriculture.* A conflict of interest does not include the situation when the State's Secretary of Agriculture or an employee of the State's Department of Agriculture, or similar agency, acts as a member of the Center's board of directors because this representation is a requirement for the program.

(c) *Written disclosure.* Recipients must comply with 2 CFR 400.2(b), which includes providing written disclosure to the Agency of any potential conflicts of interest and maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal Awards.

(d) *Assistance to employees, relatives, and associates.* The Agency will process any requests for assistance under this subpart in accordance with 7 CFR part 1900, subpart D.

(e) *Member/delegate clause.* No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; provided, however, that this provision shall not be construed to bar, as a contractor under the Federal Award, a publicly held corporation whose ownership might include a member of Congress.

§ 4284.1007 [Reserved]

§ 4284.1008 Compliance with other laws and regulations.

The Agency, Applicants, and Recipients must comply with all applicable laws and regulations. An effort has been made to identify the most-commonly cited laws and regulations and reference them as follows:

(a) *Federal laws.* Federal laws are codified in the United States Code (U.S.C.). A selection of laws applicable to this program is identified as follows:

(1) Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

(2) Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*).

(3) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(4) The Civil Rights Act of 1964, Title VI (42 U.S.C. 2000d *et seq.*).

(5) The Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794).

(b) *Federal regulations.* Federal regulations are codified in the Code of Federal Regulations (CFR). In particular, 2 CFR parts 1 through 200 are applicable to all Federal grant programs. These parts address items such as universal entity identifiers, reporting subaward and executive compensation, debarment and suspension, drug-free workplaces, administrative requirements, cost principles, and audit requirements. We particularly advise Applicants and Recipients to become familiar with 2 CFR part 200 in its entirety.

(c) *Departmental regulations.* Departmental regulations are those regulations that are specific to awards made through USDA. They are codified in the CFR. A selection of applicable regulations is identified as follows:

(1) *2 CFR parts 400 through 499.* These parts include USDA's adoption of Federal administrative requirements and cost principles. They also include regulations on debarment and suspension, lobbying, drug-free workplaces, and research awards.

(2) *7 CFR part 11.* This part includes USDA's procedures for administrative appeals, as handled by its National Appeals Division.

(3) *7 CFR part 15.* This part includes USDA's procedures for compliance with nondiscrimination laws and regulations.

(d) *Agency regulations.* Agency regulations are those regulations that are specific to awards made through the Agency and they may also be specific to a program. They are codified in the CFR. A selection of those regulations is as follows:

(1) *7 CFR part 1900.* This part covers delegations of authority, Adverse Decisions and administrative appeals, applicability of Federal law, and processing and servicing grant awards.

(2) *7 CFR part 1901, subpart E.* This subpart covers civil rights compliance requirements.

(3) *7 CFR part 1951.* This part covers servicing grant awards, including unauthorized assistance.

(4) *7 CFR part 1970.* This part covers environmental policies and considerations.

(e) *Access to laws and regulations.* (1) Laws may be accessed through the U.S.C. At the time this subpart was published, the U.S.C. may be accessed electronically at this website: <https://uscode.house.gov/>.

(2) Regulations may be accessed through the CFR. At the time this subpart was published, the CFR may be accessed electronically at this website: <https://www.ecfr.gov/>.

§§ 4284.1009–4284.1019 [Reserved]**Eligibility Information****§ 4284.1020 Applicant eligibility.**

Applicants must meet certain requirements to be eligible for funding through this program. Those requirements are described as follows:

(a) *Eligible entities.* Entities are eligible for assistance through this program if all the following requirements are met:

(1) *System for Award Management (SAM) registration and unique entity identifier (UEI).* Entities must have an active registration in SAM. This registration must remain current, accurate, and complete at the time of application, while the application is under consideration for funding, and while a Recipient has an active Federal Award. This registration includes obtaining a UEI, or its successor, through *SAM.gov*.

(2) *Entity type.* The entity is organized or incorporated in a State, and it is one of the following types of organizations: Commercial Organization, Indian Tribe, Institution of Higher Education, Local Government, Nonprofit Organization, or State government. A consortium is also eligible to apply, but it must select a single organization to represent the consortium as the Applicant. Only the Applicant organization must meet the eligibility requirements.

(3) *Board of Directors.* The entity proposes to create or to continue to operate a Center that is governed by a Qualified Board of Directors.

(4) *Experience/capability to provide services.* The entity demonstrates that it has provided at least three (3) years of Producer Services prior to application or that it has the capability to provide Producer Services by hiring at least two Key Personnel who have at least three (3) years of experience providing Producer Services.

(5) *Financial capability.* The entity has the financial capability for the proposed project. In particular, the following must be true:

(i) The most recent independent audit confirms that the entity has a current ratio of at least 1:1 at the end of the fiscal year; and

(ii) The most recent independent audit confirms that the entity has sufficient cash on hand at the end of the fiscal year to cover at least three months of expenses for the proposed project.

(b) *Ineligible entities.* Entities are ineligible for assistance from this program if any of the following occurs:

(1) An outstanding judgment has been obtained against the entity by the United States in a Federal Court (other

than in the United States Tax Court). The entity is ineligible for assistance until the judgment is paid in full or otherwise satisfied. Funds from this program may not be used to satisfy the judgment.

(2) The entity is delinquent on the payment of Federal income taxes.

(3) The entity is delinquent on Federal debt.

(4) The entity is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.” (See 2 CFR part 417 for more information.)

(5) The entity has been convicted of a felony criminal violation under any Federal law within the past 24 months.

(6) The entity has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, unless a Federal agency has considered suspension or debarment of the organization and has made a determination that this further action is not necessary to protect the interests of the Government.

(7) The entity is an individual.

(8) The entity has an award through this program that is not scheduled to end until after September 30 of the year in which the application is submitted.

§ 4284.1021 Ultimate beneficiary eligibility.

Centers must provide Producer Services only to Agricultural Producers. The Agricultural Producers may purchase or intend to purchase up to 49 percent of the primary Agricultural Commodity needed for the Value-Added Agricultural Product that is being developed and/or marketed. Note that the primary Agricultural Commodity is considered the commodity for which the greatest volume is required to produce the Value-Added Agricultural Product. The Agricultural Producers must maintain ownership of the primary Agricultural Commodity from production through the sale of the Value-Added Agricultural Product. See § 4284.1003 for the definitions of Agricultural Commodity, Agricultural Producer, and Value-Added Agricultural Product.

§ 4284.1022 Project eligibility.

Projects must meet certain requirements to be eligible for funding through this program. Those requirements are as follows:

(a) *Eligible projects.* Eligible projects must meet all of the following requirements. Failure to meet one or more of these requirements will render the application ineligible for funding.

(1) *Project purpose.* The sole purpose of the project must be to increase and improve the ability of Agricultural Producers to market Value-Added Agricultural Products, with at least one goal related to increasing and improving the ability of Local Agricultural Producers to market Value-Added Agricultural Products

(2) *Amount requested.* The minimum amount requested for an award must be \$600,000 and the maximum amount that can be requested is \$1,000,000.

(3) *Matching Funds.* Matching Funds are required for at least one-third of the Project Cost. For example, if the Project Cost is \$1,500,000, Matching Funds must be at least \$500,000. Matching Funds must be from non-Federal sources (unless otherwise provided by statute) and may be provided in cash by the applicant or by a third party or in-kind by a third party. They must be available for use during the Period of Performance, and they must be used for allowable expenses. Applicants may not use unrecovered Indirect Costs as Matching Funds.

(4) *Allowable use of funds.* The project must use award and Matching Funds for allowable purposes. See § 4284.1025 for additional information.

(5) *Agricultural support.* The project has the support of at least three organizations whose primary mission is to support agriculture in the State in which the Center is located.

(6) *Period of Performance.* The Period of Performance must be three (3) years. The Period of Performance must start within 90 days of award approval, unless otherwise authorized by the Agency.

(7) *Contracts with other Centers.* Contracts and/or subawards with other Centers funded through this program must be limited to 10 percent or less of total Project Costs.

(b) *Ineligible projects.* Projects are ineligible for assistance through this program if the application:

(1) Includes a conflict of interest (see § 4284.1006 for more information), where the expenses associated with the conflict of interest exceed 10 percent of the Project Cost. If the costs associated with the conflict of interest are 10 percent or less, the process in paragraph (b)(5) of this section will be followed.

(2) Requests less than the minimum or more than the maximum grant amount.

(3) Focuses assistance on only one Agricultural Producer or business.

(4) Earns revenue from processing or selling a product as part of the project. Centers may charge fees for services provided, but they cannot earn revenue from processing a product or from sales associated with a product they helped develop.

(5) Includes unallowable costs totaling more than 10 percent of Project Costs. If the application includes 10 percent or less of Project Costs in unallowable costs, and the application is otherwise eligible and selected for funding, those unallowable costs must be removed. If time permits, the Agency may allow those unallowable costs to be replaced with allowable costs. Otherwise, the amount of the Award will be reduced accordingly. If we cannot determine the percentage of unallowable costs, your application will not be considered for funding.

§§ 4284.1023–4284.1024 [Reserved]

§ 4284.1025 Use of funds.

Allowable and unallowable uses of funds are described as follows:

(a) *Allowable uses of funds.* The following types of activities and expenses are allowable:

(1) Producer Services as defined in § 4284.1003.

(2) Costs associated with establishing and operating a Center, including legal services, accounting services, clerical assistance, technical services, office supplies, hiring employees, monitoring contracts, professional development for staff, attending conferences related to value-added agriculture and marketing food products, and Board of Directors travel.

(3) Additional information on allowability of costs can be found at 2 CFR part 200, subpart E, for all organization types.

(b) *Unallowable uses of funds.* The following types of activities and expenses are unallowable:

(1) Provide services to entities other than Agricultural Producers.

(2) Fund manufacturing or processing expenses, including test, trial, or initial production runs.

(3) Pay for interns or internships.

(4) Provide tuition remission or other financial support to students at any level of education.

(5) Provide participant support costs outside of the grants to Agricultural Producers.

(6) Fund any direct expenses for the production of any Agricultural Commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility; to include the purchase of an Agricultural Commodity.

(7) Plan, fund architectural work, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility.

(8) Purchase Real Property.

(9) Purchase, rent, or install Equipment.

(10) Purchase or repair vehicles, including boats.

(11) Pay for the preparation of the grant application.

(12) Pay expenses not directly related to the funded project.

(13) Pay for any goods or services from a person or entity who has a conflict of interest with the Recipient (see § 4284.1006).

(14) Duplicate activities paid for by another Federal grant program.

(15) Pay costs of the project incurred prior to the date of award approval, unless authorized by the Agency at the time of award approval.

(16) Pay for assistance to any private business enterprise that does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(17) Pay any judgment or debt owed to the United States.

(18) Fund any activities considered unallowable by the applicable cost principles, most of which are included in 2 CFR part 200, subpart E.

§§ 4284.1026–4284.1029 [Reserved]

§ 4284.1030 Notifications.

The Agency will issue any program notifications identified in paragraphs (a) through (c) of this section on the program website. An annual notification will also be published on the OMB-designated governmentwide website.

(a) *Amount of funding available.* The Agency will publish the amount of funding available for awards during each fiscal year within 30 calendar days of receiving notification from OMB of the amount of funding available.

(b) *Priority points.* The Agency will publish the priorities applicable to the program no later than the application period opening date each year. Points will be awarded in accordance with § 4284.1040(d).

(c) *Other.* The Agency will publish any other additional requirements or programmatic changes no later than the date the application period opens.

Application Requirements

§ 4284.1031 Application requirements.

All applications must include the following items:

(a) *Form SF-424, “Application for Federal Assistance.”* This form must be

filled out completely and signed by an authorized representative of the Applicant organization.

(b) *Form RD 4284-1, “Application for the Agriculture Innovation Center Program.”* This form must be filled out completely. Failure to complete any section on the form will result in the application being determined ineligible for funding.

§ 4284.1032 [Reserved]

§ 4284.1033 Submission requirements.

The following information identifies when applications can be submitted, where applications must be submitted, and the format of applications.

(a) *Submission period.* (1) The application period opens on November 1. Applications received prior to the opening date in a given fiscal year will not be considered.

(2) The application period closes at 11:59 p.m. Eastern time (ET) on January 31 of the following year. Applications received after the closing date will not be considered. This means that if the application is emailed prior to 11:59 p.m. ET on the closing date, but the Agency's system does not receive it until after the deadline, the application will not be considered for funding. Thus, applicants are encouraged to submit their applications well in advance of the closing date to ensure timely receipt by the Agency.

(b) *Submission address.* Applications must be submitted electronically to the email address listed on the program website.

(c) *Submission format.* All items required for the application must be submitted in a single application. No attachments other than the required items will be considered. Incomplete applications will be rejected.

§§ 4284.1034–4284.1039 [Reserved]

Application Processing

§ 4284.1040 Application processing.

The following information describes the way the Agency will process applications, including evaluating eligibility, risk, and merit.

(a) *Eligibility evaluation.* The Agency will review all complete applications to determine if they are eligible for assistance based on the requirements in this subpart and other applicable Federal laws and regulations. In particular, the Agency will check the OMB-designated repository of government information, and Applicants that are excluded from Federal funding will be determined ineligible (see 2 CFR 200.206 for more information). An application must

include all application requirements identified in § 4284.1031, or the Agency will determine that it is ineligible for assistance.

(b) *Risk evaluation.* The Agency will review those applications that are determined to be eligible for the program for risk based on financial risk and satisfactory past performance as described in paragraphs (b)(1) and (2) of this section. Typically, the Agency will not determine that an application is ineligible for funding based on the results of the risk evaluation, unless the Agency cannot find a way to reasonably mitigate the risk posed by making an award. For example, if an Applicant lacks appropriate internal controls, but has not experienced significant audit findings as a result, the Agency may choose to mitigate the lack of internal controls by requiring funds to be disbursed on a reimbursement basis until adequate internal controls are in place. However, if audit findings identify significant shortcomings in the Applicant's ability to manage Federal funds, the Agency may determine that the application is not eligible for funding.

(1) *Financial risk.* The Agency will review the organization's most recent independent audit and financial statements, provided that the most recent audit and financial statements have been created during the previous year.

(2) *Satisfactory past performance.* The entity has satisfactory performance for all Federal Awards received within the last five (5) years, based on a review of deficiencies reported by the Federal Awardee Performance and Integrity Information System, or its successor system, the Do Not Pay system, or its successor system, and the Agency's own internal financial and record-keeping systems and files. Satisfactory performance includes timely submission of required reports and documents, timely completion of tasks, and proper use of funds.

(c) *Merit evaluation.* The Agency will conduct a merit evaluation for those applications that are determined to be eligible for the program. The merit evaluation will be conducted by a panel of USDA employees, who will convene to reach a consensus on the merit of each eligible application. The total points available are 90. The merit evaluation will be based on the following criteria:

(1) *Federal Award management (0 to 10 points).* Applicants who have managed Federal Awards with the primary purpose of providing technical assistance with Periods of Performance that have start and end dates within the

last five (5) years of the date of application will receive points as described in paragraphs (c)(1)(i) through (iii) of this section. Note that an award for which a performance deficiency is identified will not be scored. The Agency will use *USASpending.gov*, or its successor system, to verify the award information provided in the application. The Agency will also use *SAM.gov*, or its successor system, in addition to USDA internal systems to check for performance deficiencies. Examples of performance deficiencies are performance and/or financial reports that are more than 90 calendar days overdue and failure to accomplish the approved scope of work.

(i) *Amount (0 to 3 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards for amounts greater than \$600,000 will receive more points.

(ii) *Time period (0 to 3 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards for time periods of at least three (3) years will receive more points.

(iii) *Provision of technical assistance (0 to 4 points).* Zero points will be awarded if no Federal Awards are identified. Applications that identify multiple Federal Awards in which the Applicant provided technical assistance will receive more points.

(2) *Qualifications of Key Personnel (0 to 20 points).* Projects that have qualified Key Personnel will receive points as described in paragraphs (c)(2)(i) through (v) of this section. Only Key Personnel that are currently employed or on contract with the Center will be considered. Key Personnel are considered qualified if they have at least five (5) years of experience in providing at least one Producer Service that the Center proposes to offer in its application. The Agency will consider years of experience, the number of times a service has been provided, the number of services provided, the complexity of the role the person played in providing the service, and the outcomes of the services when awarding points for qualifications.

(i) *Zero Key Personnel (0 points).* No qualified Key Personnel are identified.

(ii) *One Key Personnel (0 to 5 points).* One qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will

be awarded to applications that demonstrate the person has exceptional qualifications.

(iii) *Second Key Personnel (0 to 5 points).* A second qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(iv) *Third Key Personnel (0 to 5 points).* A third qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(v) *Fourth Key Personnel (0 to 5 points).* A fourth qualified person is identified. Zero points will be awarded if the person identified is not qualified. One point will be awarded to applications that demonstrate the person meets the qualifications. Two to three points will be awarded to applications that demonstrate the person exceeds the qualifications. Four to five points will be awarded to applications that demonstrate the person has exceptional qualifications.

(3) *Outreach plan (0 to 20 points).* Applications that have a well-designed outreach plan will receive points as described in paragraphs (c)(3)(i) through (iii) of this section.

(i) *Goals (0 to 6 points).* The goals are clear and include a way to measure the success of the project in a quantitative way, including the baseline of the metric, and a target for the metric. Zero points will be awarded if the application does not include at least one goal, performance measurement, baseline of the metric, and target for the metric. One or two points will be awarded if the application has at least one goal, one metric, the baseline of the metric, and a target for the metric. Three or four points will be awarded to applications that exceed this threshold. Five or six points will be awarded to applications that exceed the threshold and have exceptional goals, metrics, baselines, and targets.

(ii) *Identified need (0 to 8 points).* The application identifies a clear need in the proposed service area that connects to

the goals of the project. Zero points will be awarded if the application does not identify a clear need in the proposed service area that connects to the goals of the project. One to five points will be awarded to applications that identify clear needs in the proposed service area that connect to the goals of the project. One or two additional points will be awarded to applications that describe how the need was identified. One additional point will be awarded to applications that describe an identified need in an Underserved and Economically Distressed Area.

(iii) *Customer identification (0 to 6 points)*. The application describes how the Center will identify customers for the Producer Services it proposes to provide. Zero points will be awarded if the application does not identify how the Center will identify its customers. One to five points will be awarded to applications that describe a basic plan for identifying customers. One additional point will be awarded to applications that describe a plan for identifying customers in an Underserved and Economically Distressed Area.

(4) *Coordination, collaboration, and partnerships (0 to 20 points)*. Coordination, collaboration, or a partnership exists if there is a formal arrangement between the Center and another organization to either provide one or more Producer Services or for the other organization to provide a different type of service that supports one or more project goals. (Note that a formal arrangement means a written agreement that is signed by both parties and includes a purpose statement.) One example is a Center that provides product development but does not have a commercial kitchen. The Center could coordinate with a commercial kitchen to work with producers on recipe development or consumer taste testing. Another example is providing a contribution to the project in the form of Matching Funds, where the contribution from a third party is Key Personnel or expert consulting services to provide Producer Services. Applicant organizations who demonstrate that they will coordinate, collaborate, or partner with other organizations for the proposed project will receive more points, based on the description as follows:

(i) *Coordination, collaboration, or partnership with one other organization (0 to 4 points)*. The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner

will provide, and the quantity of the services that the partner will provide.

(ii) *Coordination, collaboration, or partnership with a second organization (0 to 4 points)*. The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(iii) *Coordination, collaboration, or partnership with a third organization (0 to 4 points)*. The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(iv) *Coordination, collaboration, or partnership with a fourth organization (0 to 4 points)*. The Agency will evaluate the complexity of the relationship, the significance of the gap in the Center's services that the relationship fills, the quality of the services that the partner will provide, and the quantity of the services that the partner will provide.

(v) *Underserved and Economically Distressed Area (0 to 4 points)*. The Agency will award one point for each coordination, collaboration, or partnership that connects the project to an Underserved and Economically Distressed Area.

(5) *Scope of the project (0 to 20 points)*. The scope of the project will be evaluated based on the service area, the types of services offered, the uniqueness of the services offered, and the number of commodities assisted.

(i) *Service area (0 to 4 points)*. Projects that propose to provide Producer Services to a larger service area will receive more points, based on the following structure:

(A) *Few counties (0 points)*. Projects that propose to provide services to up to 10 percent of the counties in the State will receive 0 points.

(B) *Some counties (1 point)*. Projects that propose to provide services to more than 10 percent and up to 25 percent of the counties in the State will receive 1 point.

(C) *Many counties (2 points)*. Projects that propose to provide services to more than 25 percent and up to 50 percent of the counties in the State will receive 2 points.

(D) *Majority of State (3 points)*. Projects that propose to provide services to more than 50 percent and less than 100 percent of the counties in the State will receive 3 points.

(E) *State-wide (4 points)*. Projects that propose to provide services to all counties in a State will receive 4 points.

(ii) *Types of services (0 to 8 points)*.

Projects that offer a greater variety of Producer Services will receive more points. See § 4284.1003 for the definition of Producer Services. Each category of Producer Service offered will receive one point. If no proposed services fit into one of the categories, zero points will be awarded. The categories are as follows:

- (A) Financial advisory services.
- (B) Organizational assistance.
- (C) Value chain coordination.
- (D) Process development.
- (E) Product development.
- (F) Business development services.
- (G) Marketing assistance.
- (H) Grants to Agricultural Producers.

(iii) *Number of commodities (0 to 3 points)*. Projects that have the capacity to provide services to support Value-Added Agricultural Products from multiple Agricultural Commodities in addition to the four represented on the Board of Directors of the Center will receive more points.

(iv) *Unique services (0 to 3 points)*. Projects that will contribute unique services in the proposed service area will receive more points. Unique means that the services are not already provided in the service area.

(v) *Physical location (0 to 2 points)*. Projects that will provide services at more than one physical location will receive more points.

(d) *Priority Points (0 to 10 points)*. Each year, RBCS will select up to two priorities from the current published priorities for the RD mission area that are applicable to the program. These priorities will be published on the program website and in the annual notice no later than the date that the application period is open. Projects will be awarded five points for each priority that they meet, based on the information provided in the application, for a maximum of ten points.

§ 4284.1041 Application withdrawal.

During the period between the submission of the application and award approval, the Applicant must notify the Agency in writing if the project is no longer viable or if the Applicant is no longer requesting financial assistance for the project. When the Applicant notifies the Agency, the application will be withdrawn from consideration for funding.

§§ 4284.1042–4284.1049 [Reserved]

Award

§ 4284.1050 Award selection.

(a) The Agency will review applications to determine if they are

eligible for assistance based on requirements in this subpart, and other applicable Federal laws and regulations. If the Agency determines that your application meets the requirements, it will be scored by a panel of USDA employees in accordance with the merit evaluation criteria and point allocation specified in § 4284.1040(c). The review panel will convene to reach a consensus on the scores for each of the eligible applications. Applications will be ranked solely based on the points awarded, and they will be funded in rank order until available funds are expended or a minimum score of 40 points is reached. If an application cannot be fully funded, the Agency may offer partial funding to the extent funds are available.

(b) If an application is ranked and not funded, it will not be carried forward into the next funding competition.

§ 4284.1051 Notification of successful Applicants.

(a) The Agency will notify the Applicants whose applications can be funded using available funds with a Letter of Conditions. The Letter of Conditions will provide the conditions under which an award can be approved as well as a copy of the terms of the award.

(b) An Applicant receiving a Letter of Conditions will have 60 calendar days to meet the conditions of the award. If the applicant does not meet the conditions, the Agency will discontinue processing the application and offer funding to another Applicant based on the ranking from the merit review panel if sufficient time exists for the application to be fully processed and an award approved by September 30 of the current fiscal year. If sufficient time does not exist, the funds will not be awarded.

(c) To view the standard conditions for all awards, please visit the program website.

§ 4284.1052 Notification of unsuccessful applicants.

Applicants whose applications are not eligible for financial assistance or did not score high enough to be funded will be notified as soon as it is practicable. The notification will be in writing using an Adverse Decision Letter. This letter will outline the reason(s) for the Agency's decision and what dispute resolution alternatives the Applicant has. (See also 7 CFR part 11.)

§ 4284.1053 Award approval.

The Agency will approve an award once the Applicant has met all the conditions of the award. The approval will be conveyed through the execution of Form RD 4280–2, which is the Financial Assistance Agreement, and provides all terms of the award. Once the award has been approved, the Recipient may begin work on the project and incur costs.

§§ 4284.1054–4284.1059 [Reserved]

Post-Award

§ 4284.1060 Reporting requirements.

Recipients are required to submit financial reports and performance reports based on the following requirements.

(a) *Financial reports.* Financial reports are required on a semi-annual basis and after the Period of Performance has ended.

(1) *Semi-annual report.* Reporting periods are October 1 through March 31 and April 1 through September 30. Reports are due 30 calendar days after the reporting period ends. The report must include the submission of the SF–425, “Federal Financial Report,” and any additional information specified in the Financial Assistance Agreement.

(2) *Final report.* The final financial report is due 120 calendar days after the reporting period ends. The report must include the submission of the SF–425, “Federal Financial Report,” and any

additional information specified in the Financial Assistance Agreement.

(b) *Performance reports.* Performance reports are required on a semi-annual basis and after the Period of Performance has ended.

(1) *Semi-annual reports.* Reporting periods are October 1 through March 31 and April 1 through September 30. Reports are due 30 calendar days after the reporting period ends. The report must use the format specified in the Financial Assistance Agreement.

(2) *Final report.* The final report is due 120 calendar days after the end of the Period of Performance. The report must use the format specified in the Financial Assistance Agreement.

§ 4284.1061 Monitoring awards.

Awards will be monitored by Agency personnel in accordance with applicable laws, regulations, and policies (see § 4284.1008 for more information). The Agency will designate a contact person for each award. The Agency may terminate or suspend the award for lack of adequate or timely progress, reporting, documentation, or for failure to comply with Agency requirements.

Other

§ 4284.1062–4284.1099 [Reserved]

§ 4284.1100 OMB control number.

The reporting and recordkeeping requirements contained in this subpart have been approved by OMB and have been assigned OMB control number 0570–0045 in accordance with the Paperwork Reduction Act of 1995.

Kathryn E. Dirksen Londrigan,
Administrator, Rural Business-Cooperative Service, USDA Rural Development.

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Part V

Securities and Exchange Commission

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100961; File No. SR–EMERALD–2024–24]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 6, 2024.

Pursuant to the provisions of 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 August 23, 2024, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (the “Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in

November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after

concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Miami International Securities Exchange LLC (“MIAX Rule”) Rule 1701(u). The Exchange notes that MIAX Chapter XVII is incorporated by reference into the Exchange’s rulebook. As such, MIAX Chapter XVII also applies to the Exchange. See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See MIAX Rule 1701.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as

the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) ²⁰

No.	Field name	Data type	Description	Include key
16.n.13/7.n.13 ..	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing

Brokers for the transactions executed otherwise than on an exchange.

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ Securities Exchange Act Rel. No. 99373 (Jan. 17, 2024), 89 FR 110011 (Feb. 13, 2024) (SR–Emerald–2024–01).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use

of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to, pass-through their CAT fees to their clients, who

may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party.	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67). The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost

details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Public relations	224,669
Total Operating Expenses	124,290,730

*The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

**The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The

use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other

services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC

approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS,

LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See Appendix C-108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants, the SEC and its staff;

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;

- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content;⁴⁰ and

- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS

Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant

reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) and Pillsbury Winthrop Shaw Pittman LLP (“Pillsbury”), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm’s qualifications, resources and expertise; (2) the firm’s relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale’s billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale’s performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale’s compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group (“DAG”);
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Assisted with the development of the CAT funding model and drafted

related amendments of the CAT NMS Plan and related filings;

- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC’s amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the “Reporter Agreement”). During that period, Pillsbury advised CAT LLC

regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury

⁴⁵ Section 9.2 of the CAT NMS Plan.

functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and

- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved

among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	\$7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array

of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM

Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data,

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;

- Provided support in discussions with Participants and the SEC and its staff;

- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and

- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;

⁵⁰ Note that the volume data described in this table does not include CAIS data.

- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1,

Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

(\$14,325,493) and CEBSSs paying one-third (\$14,325,493). The following table

breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set

forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees

represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that

needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for

financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin.

CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton.

CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak

Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
<i>Technology Costs</i>	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As

such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a

subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and

complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to

responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the

relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team,

including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM

Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February

2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
 - Provided cash management and treasury functions;
 - Facilitated bill payments;
 - Provided monthly bookkeeping;
 - Reviewed vendor invoices and documentation in support of cash disbursements;
 - Provided accounting research and consultations on various accounting, financial reporting and tax matters;
 - Addressed not-for-profit tax and accounting considerations;
 - Prepared tax returns;
 - Addressed various accounting, financial reporting and operating inquiries from Participants;
 - Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
 - Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
 - Supported compliance with the CAT NMS Plan;
 - Worked with and provided support to the Operating Committee and various CAT working groups;
 - Prepared monthly, quarterly and annual financial statements;
 - Supported the annual financial statement audits by an independent auditor;
 - Reviewed historical costs from inception; and
 - Provided accounting and financial information in support of SEC filings.
- Market Data Provider: Exegy.* From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [sic] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting

such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may

not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is

required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically,

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is

Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state

reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) of the fee schedule.

that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.⁸⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail,

LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer

payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker’s executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023–02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees.” CAT Funding Model Approval Order at 62667.

Plan states that, “[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended

to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹² The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁴ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities

transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁵ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

validations.’’⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of

a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMS, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated

in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order's lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small

OATS Reporters)” was completed on October 26, 2020; and

- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478.

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual

Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible

electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

¹¹³ *Id.*

Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (e.g., quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for

purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes ("RFQs") that are not immediately actionable ("NIA Electronic RFQ Responses") affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered "orders" reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are "orders," as the definition of "order" is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members', not those of the Participants

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for

exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the

conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁸ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³¹ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following

discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan

(“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required

considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development

of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738-39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through

September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the

¹⁵⁵ *Id.*

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and

comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements,

and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- **Industry Member Reporting.** In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly,

Industry Members are not required to perform this costly task.

- **File Submission Process.** The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- **Error Corrections.** The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- **Data Ingestion Format.** The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT

Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that “AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios.”¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, “[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires.”¹⁶⁹

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would

increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, “[t]he best practice is to focus on a single primary strategic provider.”¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission

recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) (“Strategic Cloud Assessment Article”).

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16,

2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the

Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives

were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
 - The full, final CAIS Technical Specifications were published on January 29, 2021.
 - Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶
- As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to

CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the "Reporting Agreements") is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself

from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA's former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA's OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . consulting . . ." costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . consulting"¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- **Order Originator Identification:** Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant

to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT

LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to

the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and

CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan,

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ Securities Exchange Act Rel. No. 99373 (Jan. 17, 2024), 89 FR 110011 (Feb. 13, 2024) (SR—Emerald-2024-01).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated

with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a

process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request

fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals,

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a

part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance

policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the

public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share

volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including

Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676–86.

necessary or appropriate in furtherance of the purpose of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-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-EMERALD-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-EMERALD-2024-24 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,
Assistant Secretary.

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²⁷³ 17 CFR 200.30-3(a)(12).



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Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; MIAX Sapphire LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100962; File No. SR–SAPPHIRE–2024–27]

Self-Regulatory Organizations; MIAx Sapphire LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 6, 2024.

Pursuant to the provisions of 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 August 23, 2024, MIAx Sapphire, LLC (“MIAx Sapphire” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAx Sapphire Fee Schedule (the “Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in

November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after

concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Miami International Securities Exchange LLC (“MIAx Rule”) Rule 1701(u). The Exchange notes that MIAx Chapter XVII is incorporated by reference into the Exchange’s rulebook. As such, MIAx Chapter XVII also applies to the Exchange. See also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. See MIAx Rule 1701.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSSs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled

as 'Consolidated Audit Trail Funding Fees.'"¹³ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBSS for each applicable transaction in Eligible Securities.¹⁶ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications;

and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER (EOT)¹⁸

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)¹⁹

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the

calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁷ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSSs may, but are not required to, pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until

they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁸ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²⁰

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBSS, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBSS collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67). The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost

details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBSS paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³² reference data and other types of Other

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

²⁴ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

Data.³³ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor

Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance

³³ See Appendix C–108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on

a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴²

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁴ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁴ Section 9.2 of the CAT NMS Plan.

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁴⁹ Note that the volume data described in this table does not include CAIS data.

WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as

project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;

• Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones (“FAM Period 2”),⁵⁰ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵¹ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵² See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already

funded by the Participants during Period 3 of the Financial Accountability Milestones (“FAM Period 3”),⁵⁴ which covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-

third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM period 3*
Capitalized Developed Technology Costs**	\$10,763,372
Technology Costs	\$123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁷

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁶ See definition of “Full Availability and Regulatory Utilization of Transactional Database Functionality” in Section 1.1 of the CAT NMS Plan.

⁵⁷ Note that the volume data described in this table does not include CAIS data.

	Date Range: 1/1/21 to 4/25/21	Date Range: 4/26/21/to 12/31/ 21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data

access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;

- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;

- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;

- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;

- Provided guidance regarding SRO rule filings for the retirement of systems;

- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Provided assistance with change requests;

- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;

- Assisted with communications with the industry, including CAT Alerts and presentations;

- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;

- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT

Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶¹

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶¹ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was

well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs

(“Excluded Costs”): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018*
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs .....	.....
Cloud Hosting Services .....	.....
Operating Fees .....	.....

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
CAIS Operating Fees .....	.....
Change Request Fees .....	.....
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

*The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee,

Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the

development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups;

- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audits by an independent auditor;

- Reviewed historical costs from inception; and

- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after

November 15, 2017,⁶³ which was the date by which Participants were required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months." ⁷⁰ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants

previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment

are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBs") (as applicable) from the prior

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(1)(A) of the fee schedule also would describe the

monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 1. Specifically, it would state that “[e]ach month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future

fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice

⁸⁵ Section 11.4 of the CAT NMS Plan.

⁸⁶ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁸

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹⁰ Such aggregate

statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹¹ The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees

pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹² As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹³ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁴ As indicated by the Participants' Quarterly Progress Report for the third quarter of

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹⁰ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

⁹³ Section 11.6 of the CAT NMS Plan.

⁹⁴ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁷ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that

are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data,

excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”⁹⁹ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b

⁹⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁶ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

⁹⁹ FAM Adopting Release at 31330, n.98.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability

Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the

CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective

September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time;

(13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹⁰

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹¹

The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹²

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*,

quotations provided via email or instant messaging).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was

less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,422.70) and

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.*

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

CEBSs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders”

reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided

that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²⁰ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁶ *Id.* at 10.

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³⁰ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan

expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in

accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte

¹²⁸ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or

transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP

process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴⁰

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit

trail ('Plan Processor')."¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁶ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153.

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus

believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective

approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

¹⁵⁴ *Id.*

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

¹⁴⁸ See Section D(11) of Appendix C of the CAT NMS Plan.

NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant

undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in

detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;

- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and

- Provided support in fact finding, drafting content and meeting coordination for

WilmerHale with regard to the CAT and the development of the CAT NMS Plan. Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is

appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments.

CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume

handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new

innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices

would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create

and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁷ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in

terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁸

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational

setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan.

Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the

specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁶

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID

Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²

- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁵

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting

Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a

provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong

terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its

background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;

- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT

with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁷ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales value fees for many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁹ (2) trade details schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section

6(b)(5) of the Act,²⁰⁷ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²⁰⁸ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²⁰⁹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹⁰ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹¹ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange

believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ 15 U.S.C. 78f(b)(6).

²⁰⁸ 15 U.S.C. 78f(b)(4).

²⁰⁹ 15 U.S.C. 78f(b)(8).

²¹⁰ See Section 6(b)(1) of the Exchange Act.

²¹¹ CAT NMS Plan Approval Order at 84697.

with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”²¹² Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹³ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁴ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for

Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm’s length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁵ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where

permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁶ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁷ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁸ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²¹⁹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of

²¹⁶ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁷ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁸ CAT NMS Plan Approval Order at 84801.

²¹⁹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹² CAT NMS Plan Approval Order at 84696.

²¹³ CAT Funding Model Approval Order at 62686.

²¹⁴ *Id.* at 62662–63.

²¹⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²⁰

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²¹ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars)

and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²² CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²³ The services performed by FCAT for each period and the costs related to such services are described above.²²⁴

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁵ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁶ The services performed by Kingland for each period and the costs for each period are described above.²²⁷

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change

request fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²²⁹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³⁰ Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³¹ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³² With regard to the Initial

²²² See Section 3(a)(2)(B)(i)(b) above.

²²³ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁴ *Id.*

²²⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁶ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³² *Id.*

²²⁰ See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³³ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁴

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁵ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁶

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of

Historical CAT Assessments.²³⁷ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁸ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²³⁹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴⁰ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴¹ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴²

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴³ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁴ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing

offered by the alternative insurers.²⁴⁵ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁶

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁷ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁸ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁴⁹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵⁰

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁸ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²³⁹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴⁰ See Section 3(a)(2)(B)(i)(g) above.

²⁴¹ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴² *Id.*

²⁴³ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁴ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁵ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁶ *Id.*

²⁴⁷ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁴⁸ See Section 3(a)(2)(B)(i)(i) above.

²⁴⁹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁰ *Id.*

²³³ See Section 3(a)(2)(B)(i)(e) above.

²³⁴ See Section 3(a)(2)(B)(i)(b) above.

²³⁵ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁶ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

balance of these considerations.²⁵¹ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵³

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁴

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁵

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁶ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public

relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁷ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁸ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁵⁹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶⁰ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶¹

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶² Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ *Id.*

²⁵⁶ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁷ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁸ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁵⁹ *Id.*

²⁶⁰ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶¹ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶² CAT Funding Model Approval Order at 62658, n.658.

the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶³ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁴ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁵ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁶ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation

of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed

rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act²⁶⁷ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁶⁸ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the

²⁶³ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁴ *Id.*

²⁶⁵ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁶ CAT Funding Model Approval Order at 62629.

²⁶⁷ 15 U.S.C. 78f(b)(8).

²⁶⁸ CAT Funding Model Approval Order at 62676–86.

resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁶⁹ and Rule 19b-4(f)(2) thereunder,²⁷⁰ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2024-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-SAPPHIRE-2024-27. 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-SAPPHIRE-2024-27 and should be submitted on or before October 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷¹

Sherry R. Haywood,

Assistant Secretary.

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²⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷⁰ 17 CFR 240.19b-4(f)(2).

²⁷¹ 17 CFR 200.30-3(a)(12).



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Part VII

Environmental Protection Agency

40 CFR Part 84

Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA-HQ-OAR-2024-0196; FRL-10782-01-OAR]

RIN 2060-AV98

Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency is undertaking this rulemaking to assess the eligibility of six applications to receive priority access to allowances allocated pursuant to the American Innovation and Manufacturing Act of 2020. This rulemaking proposes the framework for how EPA will assess whether to renew the eligibility of applications to receive application-specific allowances; decisions to renew or not renew each of the six applications that currently receive application-specific allowances; revisions to the Technology Transitions regulations as relevant to the specific applications under review; a procedural process for submitting a petition to designate a new application as eligible for priority access to allowances; narrow revisions to the methodology used to allocate allowances to application-specific allowance holders for calendar years 2026 and beyond; and limited revisions to existing regulations. EPA is also proposing to authorize an entity to produce regulated substances for export. Lastly, EPA is proposing certain confidentiality determinations for newly received information if this rulemaking is finalized as proposed.

DATES: Comments must be received on or before October 31, 2024. Any party requesting a public hearing must notify the contact listed below under **FOR**

FURTHER INFORMATION CONTACT by 5 p.m. Eastern Daylight Time on September 23, 2024. If a virtual public hearing is held, it will take place on or before October 1, 2024 and further information will be provided at <https://www.epa.gov/climate-hfcs-reduction>.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2024-0196. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Michelle Graff, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202-564-5387; or email address: graff.michelle@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms and abbreviations that are used in this rulemaking that may be helpful include:

2-BTP—2-bromo-3,3,3-trifluoropropene
AAGR—Average Annual Growth Rate
AES—Automated Export System
AIM Act—American Innovation and Manufacturing Act of 2020
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
APU—Auxiliary Power Unit
ASHRAE—American Society for Heating, Refrigerating, and Air-Conditioning Engineers
ASA—Application-Specific Allowance
CAA—Clean Air Act
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CF₃I—Trifluoroiodomethane
CFR—Code of Federal Regulations
CGMP—Current Good Manufacturing Practice
CHIPS Act—Creating Helpful Incentives to Produce Semiconductors Act of 2022
ClF₃—Chlorine Trifluoride
CO₂—Carbon Dioxide
COVID—Coronavirus Disease
CVD—Chemical Vapor Deposition
DFARS—Defense Federal Acquisition Regulation Supplement
DOD—U.S. Department of Defense
DOJ—U.S. Department of Justice
EEI—Electronic Export Information
EV—Exchange Value
EVe—Exchange Value Equivalent
EPA—U.S. Environmental Protection Agency
FAA—Federal Aviation Administration
FAR—Federal Acquisition Regulation
FDA—U.S. Food and Drug Administration
FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act

FSTOC—Fire Suppression Technical Options Committee
FTOC—Flexible and Rigid Foams Technical Options Committee
FR—Federal Register
GHG—Greenhouse Gas
GWP—Global Warming Potential
HCFO—Hydrochlorofluoroolefin
HFC—Hydrofluorocarbon
HFIB—Hexafluoroisobutylene
HFO—Hydrofluoroolefin
ICAO—International Civil Aviation Organization
ICR—Information Collection Request
IPCC—Intergovernmental Panel on Climate Change
ITN—Internal Transaction Number
Kg—Kilogram
MCMEU—Mission-Critical Military End Uses
MCTOC—Medical and Chemicals Technical Options Committee
MDI—Metered Dose Inhaler
MT—Metric Ton
MTEVe—Metric Tons of Exchange Value Equivalent
NAICS—North American Industry Classification System
NF₃—Nitrogen Trifluoride
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substances
OMB—U.S. Office of Management and Budget
PFC—Perfluorocarbon
PII—Personally Identifiable Information
PRA—Paperwork Reduction Act
PU—Polyurethane
RACA—Requests for Additional Consumption Allowance
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
RSV—Respiratory Syncytial Virus
SCPPU—Structural Composite Preformed Polyurethane
SF₆—Sulfur Hexafluoride
SiN—Silicon Nitride
SiO₂—Silicon Dioxide
SNAP—Significant New Alternatives Policy
SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
TCE—Trichloroethylene
TEAP—Technology and Economic Assessment Panel
TSCA—Toxic Substances Control Act
TSD—Technical Support Document
UMRA—Unfunded Mandates Reform Act

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I. Executive Summary

A. Purpose of the Proposed Regulatory Action

The U.S. Environmental Protection Agency (EPA) is undertaking this action to implement certain provisions of the

American Innovation and Manufacturing Act of 2020, codified at 42 U.S.C. 7675 (AIM Act or the Act). The Act directs EPA to implement the phasedown of hydrofluorocarbons (HFCs) by issuing a limited quantity of transferrable production and consumption allowances, which entities must expend to produce or import HFCs. In addition, subsection (e)(4)(B) of the Act authorizes EPA to allocate allowances exclusively for the use in specific applications for which there is: (1) no safe or technically achievable substitute and (2) an insufficient supply of the HFCs used in the application that can be secured from chemical manufacturers. The Act listed six applications that would receive priority access to allowances for a five-year period beginning on December 27, 2020: propellants in metered dose inhalers (MDIs), defense sprays, structural composite preformed polyurethane (SCPPU) foam for marine use and trailer use (hereafter referred to as SCPPU foam for marine and trailer uses), the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition (CVD) chambers within the semiconductor manufacturing sector, mission-critical military end uses (MCMEU), and onboard aerospace fire suppression. EPA intends to finalize this proposed rule ahead of the allocation of calendar year 2026 allowances. Without finalization of this proposed rule, all applications would be ineligible for allowances for calendar year 2026.¹ EPA has created a category of allowances to provide this priority access, which EPA refers to as application-specific allowances (ASAs). ASAs are allocated ahead of general pool allowances based on a methodology intended to determine eligible entities' needs for regulated substances (see Section VII of this preamble and the Allocation Framework Rule (86 FR 55116, October 5, 2021) for more information). After the total ASA quantity is determined, the remaining allowances are distributed to general pool allowance recipients using a different methodology.

¹ EPA first codified the allocation methodology for general pool and ASA holders in "Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act" (hereafter referred to as the "Allocation Framework Rule") (86 FR 55116, October 5, 2021). The methodology for general pool allowance holders was subsequently updated in "Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years" (hereafter referred to as the "2024 Allocation Rule" (88 FR 46836, July 20, 2023); the ASA methodology was not updated in the 2024 Allocation Rule.

Subsection (e)(4)(B)(v) of the AIM Act directs EPA to review applications receiving priority access to allowances not less frequently than once every five years, and, if the application meets the criteria above, authorize the eligibility of the application to receive priority access to allowances for a period of not more than five years. EPA is proposing how the Agency will interpret these two criteria to review applications receiving ASAs. EPA is also proposing decisions to renew or not renew each of the six applications that currently receive ASAs.

Separately, subsection (i) of the Act authorizes EPA, by rulemaking, to restrict the use of HFCs in sectors or subsectors where the regulated substances are used. Under the authority of this provision, EPA finalized the rule “*Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020*” (hereafter referred to as the “2023 Technology Transitions Rule”; 88 FR 73098, October 24, 2023), which established restrictions for three sectors and 39 subsectors. The rule exempted applications with a current qualification for ASAs. As such, if an application is no longer eligible to receive ASAs, it would become subject to the restrictions established in the 2023 Technology Transitions Rule. EPA is therefore proposing how the Technology Transitions regulations would apply to applications if EPA were to determine that those applications are not eligible for renewal for the full five-year period.

The Act also includes a provision for the public to petition EPA to designate an application as eligible for priority access to allowances. EPA is proposing a procedural process for submitting a petition under this provision and to define minimum required elements of such a petition. In addition, this rulemaking proposes narrow revisions to the methodology used to allocate allowances to ASA holders for calendar years 2026 and beyond as well as other limited revisions to the existing 40 CFR part 84 regulations. EPA is also

proposing to authorize an entity to produce regulated substances for export for application-specific uses pursuant to subsection (e)(5). Lastly, EPA is proposing certain confidentiality determinations for newly reported information if this rulemaking is finalized as proposed.

B. Summary of Proposed Actions

Application-specific allowance holder review: EPA is describing how it proposes to interpret the criteria under subsection (e)(4)(B) of the AIM Act and evaluate the six categories of ASA holders listed in subsection (e)(4)(B)(v) of the Act. EPA is proposing to renew the following applications for the full five-year period from 2026–2030: propellants in MDIs, the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector, MCMEU, and onboard aerospace fire suppression. EPA is co-proposing two options for defense sprays: do not renew or renew for a two-year period through 2027. EPA is co-proposing three options for SCPPU foams for marine and trailer uses: do not renew, renew for a two-year period through 2027, or renew for the full five-year period from 2026–2030 with allowance amounts determined based on the exchange value (EV) of a substitute HFC. In cases where EPA is proposing to change the status of ASA holders, this proposal also details how the Technology Transitions regulations would apply to those applications.

Application-specific allowance holder petitions: EPA is proposing the process and information requirements for submitting petitions under subsection (e)(4)(B) of the AIM Act which seek the designation of an application as an essential use.

Application-specific allowance methodology: EPA is proposing targeted revisions to the existing ASA methodology: to require companies to provide a total request for allowances for the calendar year, to expand permissible scenarios that could qualify as unique circumstances, to use a different allocation methodology for

certain very small users of HFCs and entities with irregular purchasing history, how to account for inventory in allocation decisions, to establish a set-aside of allowances for situations that meet the criteria for unique circumstances related to medical conditions treated by MDIs, and to allow ASA holders to return a portion of their allowances voluntarily if they do not intend to use them. EPA is also proposing new requirements for conferrals of MCMEU allowances and an opportunity to return unneeded ASAs.

Other regulatory revisions: EPA is proposing other specific regulatory changes to: clarify the ability of the Federal government to pursue, if appropriate, auctioning illegally imported HFCs that are seized by enforcement officials, require exporting companies to report “Internal Transaction Numbers” (ITNs) quarterly, and simplify the reporting on “date of purchase” for a Request for Additional Consumption Allowances (RACA).

Authorization of production for export: EPA is proposing to authorize an entity to produce for export for application-specific uses abroad.

Handling of confidentiality for newly reported information: EPA is proposing certain confidentiality determinations for newly reported information if this rulemaking is finalized as proposed.

II. General Information

A. Does this action apply to me?

You may be potentially affected by this proposal if you use HFCs in one of the six applications eligible for an allocation under section (e)(4)(B)(iv) of the AIM Act. You may also potentially be affected if you produce, import, export, purify, destroy, reclaim, package, or otherwise distribute HFCs for end users in one of these six applications or are a current HFC allowance holder. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS code	NAICS industry description
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing.
SIC 373102	Military Ships, Building, and Repairing.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.
541714	Research and Technology in Biotechnology (except Nanobiotechnology).
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160	Fire Protection.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is EPA's authority for taking this action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (codified at 42 U.S.C. 7675). In subsection (k)(1)(A), the AIM Act provides EPA with the authority to promulgate necessary regulations to carry out EPA's functions under the Act, including its obligations to ensure that the Act's requirements are satisfied (42 U.S.C. 7675(k)(1)(A)). Subsection (k)(1)(C) of the Act also provides that Clean Air Act (CAA) sections 113, 114, 304, and 307 apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of title VI of the CAA. Accordingly, this rulemaking is subject to CAA section 307(d) (see 42 U.S.C. 7607(d)(1)(I)) (CAA section 307(d) applies to "promulgation or revision of regulations under subchapter VI of this

chapter (relating to stratosphere and ozone protection)").

The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program, facilitating the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used, and promulgating certain regulations for purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. This proposal relates to the first area and addresses restrictions in the second area for impacted subsectors.

The Act required EPA, for the five-year period beginning on December 27, 2020, to allocate the full quantity of allowances necessary, based on projected, current, and historical trends, for the production or consumption of regulated substances for the exclusive use in six applications: propellants in MDIs, defense sprays, SCPPU foam for marine and trailer uses, the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector, MCMEU, and onboard aerospace fire suppression (42 U.S.C. 7675(e)(4)(B)(iv)(I)). EPA has defined these allowances as ASAs. EPA intends to finalize this rulemaking ahead of the allocation of calendar year 2026

allowances. Without finalization of this rulemaking, all applications would be ineligible for application-specific allowances for calendar year 2026.

Subsection (e)(4)(B)(v) of the AIM Act requires EPA to review applications receiving allocations pursuant to subsection (e)(4)(B)(iv) at least every five years. If pursuant to this review EPA determines that the requirements of two statutory criteria are met, EPA shall authorize production or consumption, as applicable, of the exclusive use of regulated substances in the application for renewable periods of not more than five years. Specifically, EPA must determine whether: (1) no safe or technically achievable substitute will be available during the applicable period for the application; and (2) the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers is insufficient to accommodate the application.

Separately, an entity may file a petition for an application to receive ASAs. The AIM Act outlines timeframes and deadlines for EPA to act on such a petition and how the Agency should assess such a petition (42 U.S.C. 7675(e)(4)(B)(ii)). Specifically, not later than 180 days after receiving a petition, EPA must propose and seek public comment on whether to provide ASAs for the application. Not later than 270

days after EPA receives a petition, the Agency must take final action on the petition. Any application determined to be eligible for ASAs would also be subject to the review requirements in subsection (e)(4)(B)(v).

Subsection (i) of the AIM Act, “Technology Transitions,” provides that “the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used” (42 U.S.C. 7675(i)(1)). However, rules promulgated under subsection (i) “shall not apply to . . . an essential use under clause (i) or (iv) of subsection (e)(4)(B), including any use for which the production or consumption of the regulated substance is extended under clause (v)(II) of that subsection” (42 U.S.C. 7675(i)(7)(B)(i)). Therefore, per subsection (i)(7)(B)(i), the restrictions promulgated under the Technology Transitions Program are not currently applicable to any application receiving an ASA (40 CFR 84.56(a)(2)). To the extent that this proposal would result in an application no longer receiving an ASA, this action also proposes the Technology Transitions Program restrictions that would apply to that application, if any, based on EPA’s consideration of the factors listed in subsection (i)(4) of the AIM Act, should EPA finalize a determination that an application can no longer receive an ASA.

Prior to proposing a rule, subsection (i)(2)(A) of the Act directs EPA to consider negotiating with stakeholders in the sector or subsector subject to the potential rule in accordance with negotiated rulemaking procedures established under subchapter III of chapter 5 of title 5, United States Code (commonly known as the “Negotiated Rulemaking Act of 1990”). If EPA makes a determination to use the negotiated rulemaking procedures, subsection (i)(2)(B) requires that EPA, to the extent practicable, give priority to completing that rulemaking over completing rulemakings under subsection (i) that are not using that procedure. If EPA does not use the negotiated rulemaking process, subsection (i)(2)(C) requires the Agency to publish an explanation of the decision not to use that procedure before commencement of the rulemaking process. The Negotiated Rulemaking Act of 1990 (5 U.S.C. 563) provides seven criteria that the head of an agency should consider when determining whether a negotiated rulemaking is in the public interest, namely, whether: (1) there is a need for a rule; (2) there are a limited number of identifiable interests that will be

significantly affected by the rule; (3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the identified interests and are willing to negotiate in good faith to reach a consensus on the proposed rule; (4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time; (5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule; (6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and (7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the action proposed by the agency for notice and comment.

If a head of agency determines that the use of the negotiated rulemaking procedure is in the public interest, an agency may convene a federally chartered advisory committee, and may rely on an appointed convener under 5 U.S.C. 563(b) to assist with ascertaining the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule. If the agency decides to establish a negotiated rulemaking committee, the agency must publish in the **Federal Register** and in relevant publications a notice announcing the agency’s intention to establish a negotiated rulemaking committee, a description of the subject and scope of the rule, a list of the interests which are likely to be significantly affected by the rule, a list of the persons proposed to represent such interests and the proposed agency representatives, a proposed agenda and schedule for completing the committee’s work, a description of the administrative and technical support to be provided to the committee by the agency, a solicitation for comments on the proposal to establish the committee and on the proposed membership of the committee, and an explanation of how a person may apply or nominate another person for membership on the committee. The agency must provide at least 30 calendar days for the submission of comments and applications related to the membership of the committee. In establishing and administering such a committee, the agency shall comply with the Federal Advisory Committee Act, unless an exception applies. If the committee reaches consensus on a

proposed rule, the committee shall transmit a report containing the proposed rule to the Federal agency. If the committee does not reach a consensus on a proposed rule, the committee may transmit a report specifying any areas upon which consensus was reached. The proposed rule is still subject to public comment, and for purposes of a rulemaking developed under the AIM Act, the requirements of CAA section 307(d).

Before proposing the 2023 Technology Transitions Rule, consistent with AIM Act subsection (i)(2)(A) and (C), EPA considered whether to negotiate with stakeholders using the negotiated rulemaking procedure provided for in the Negotiated Rulemaking Act of 1990, decided not to use such procedures, and published its explanation of that decision in the **Federal Register** (86 FR 74080, December 29, 2021).

EPA noted in the final 2023 Technology Transitions Rule that, where appropriate, EPA will consider recent Agency actions and decisions related to restrictions on the use of HFCs in sectors and subsectors for its consideration on using negotiated rulemaking procedures. EPA did not, for example, separately consider using negotiated rulemaking for four petitions that were received after a rulemaking process had already been commenced regarding the same sectors and subsectors, nor did EPA consider anew whether or not to use negotiated rulemaking in an interim final rule (88 FR 88825, December 26, 2023) that amended one provision of the 2023 Technology Transitions Rule for one subsector.

Similarly, the proposed changes to the Technology Transitions regulations contemplated in this action would be targeted at a subset of applications within a subsector subject to those restrictions. EPA is not addressing a new subsector in this proposal, nor even proposing a different level of stringency from already promulgated restrictions; rather, this action proposes only to establish deadlines by which applications would need to comply with Technology Transitions regulations in the event that those applications no longer receive ASAs. EPA does not believe that the public interest would be served by using the negotiated rulemaking procedure for this limited adjustment to the Technology Transitions regulations, especially because timeliness is a concern.

III. Background

HFCs are anthropogenic² fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs are potent greenhouse gases (GHGs) with 100-year global warming potentials (GWPs) (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times that of carbon dioxide (CO₂).

HFC use and emissions have been growing worldwide due to the global phaseout of ozone-depleting substances (ODS) under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), and the increasing use of refrigeration and air-conditioning equipment globally. HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. The United States ratified the Kigali Amendment on October 31, 2022. Global adherence to the Kigali Amendment would substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.

There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs (neat and in blends) and have high impacts as measured by the quantity of each substance emitted multiplied by their respective GWPs. These 18 HFCs are all saturated, meaning they have only single bonds between their atoms, and therefore have longer atmospheric lifetimes than fluorinated compounds that are unsaturated. More detailed information on HFCs, their uses, and their impacts is available in the Allocation Framework Rule (86 FR 55116, October 5, 2021).

IV. How is EPA assessing whether to extend eligibility for application-specific allowances?

As noted in Section II.B of this preamble, the AIM Act directs EPA to undertake a review of applications receiving allowances pursuant to subsection (e)(4)(B)(iv) at least every

five years. The statute says that access to ASAs shall be authorized for a renewed period if two statutory criteria are met. Specifically: (1) “no safe or technically achievable substitute will be available during the applicable period for that application; and” (2) “the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers . . . including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application” (42 U.S.C. 7675(e)(4)(B)(1)). In this section, we outline how EPA interprets these criteria, what information the Agency will consider in assessing these criteria, and a proposed framework for evaluating if an application is eligible for renewal for up to five years. EPA notes that under the statute, these criteria also apply to new applications that may be listed, but, aside from Section VI addressing the petition process, this proposed rulemaking is primarily focused on the renewal of existing applications. However, EPA’s interpretations of the criteria discussed in this section would apply to future actions to add new applications. The AIM Act includes additional evaluation considerations for new applications in subsection (e)(4)(B)(i), but the Agency is not addressing their interpretation in this rulemaking.

A. How is EPA interpreting the “no safe or technically achievable substitute will be available” criterion?

In order for an application to continue to be eligible to receive ASAs, EPA must determine “no safe or technically achievable substitute will be available” for the application during the time period under review (42 U.S.C. 7675(e)(4)(B)(i)(I)). EPA is proposing that the best interpretation of this criterion is that if there is an available substitute that is both safe and technically achievable, an application would not meet this criterion for renewal. EPA acknowledges that the statutory language could be ambiguous as to whether a substitute must be both safe and technically achievable. However, reading the statutory language differently than proposed would seem to create a perverse outcome. In such a scenario, an application would become ineligible for ASAs if EPA identified a substitute that was technically achievable, but not safe. EPA reads the context of subsection (e)(4) as indicating that Congress intended that listed applications continue to receive priority access to allowances as long as the

application needed to use regulated substances. In a situation where an identified substitute is not safe, EPA believes that it would be Congress’s intent to continue to provide priority access to allowances such that the application was not prematurely forced to transition to an unsafe substitute. Similarly, it does not seem reasonable to take away access to ASAs when an identified substitute is safe, but not technically achievable. If the application cannot technically implement the transition to a substitute, it seems unrealistic to think that there could be a transition away from regulated substances. Accordingly, EPA proposes to interpret the statutory text and surrounding framework such that if EPA determines there is no safe substitute that is technically achievable for an application, or a technically achievable substitute is not safe, the application would meet the first criterion for renewal.

In looking at potential substitutes for an application under subsection (e)(4)(B)(i)(I), EPA is proposing to consider regulated substances (*i.e.*, other HFCs), alternative substances (*e.g.*, hydrofluoroolefins (HFOs), hydrocarbons), and blends of HFCs and/or HFC alternatives that can perform the same general function as the current HFC in use. EPA is proposing that such an interpretation of the term “substitute” is most consistent with the statutory language of subsection (e)(4)(B) as a whole. Specifically, in its direction to EPA to review applications receiving ASAs every five years, Congress directed EPA to “review the availability of substitutes, including any quantities of the regulated substance available.” This sentence structure, indicating that examination of quantities of regulated substances available would be included as part of analyzing what substitutes are available, suggests that regulated substances are part of the universe of substitutes that Congress intended EPA to include in its review. In addition to EPA’s determination that such an approach is more consistent with the statutory language than an approach of only looking at non-regulated substances as substitutes, EPA has also identified other benefits of this interpretation. For example, it would seem to be a perverse outcome if EPA renewed an application’s eligibility for ASAs at historic quantities where there was an available substitute that did not require any or required fewer allowances to procure. Non-HFCs may be able to fill the same role as the HFC, often functioning as a chemical-for-chemical

² While the overwhelming majority of HFC production is intentional, EPA is aware that HFC-23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22 and other fluorinated gases.

replacement or requiring limited design changes.

EPA is proposing, as part of its assessment of what chemicals may be determined to be safe as a substitute for applications under review, to only include substances, including blends of substances, with a lower GWP than the regulated substance currently in use. As explained in the Allocation Framework Rule (86 FR 55116, October 5, 2021), the HFC phasedown's significant benefits are derived from the reduction of production and consumption of certain chemicals on a GWP-weighted basis.³ Considering higher-GWP substances or blends of substances would run against this overall objective and could reduce the benefits of the HFC phasedown, especially if this rulemaking led to the uptake of higher-GWP non-HFC technologies (e.g., semiconductor manufacturers transitioning back to using higher-GWP perfluorocarbons (PFCs)). In addition, this proposed interpretation aligns with the approach under the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023), which established GWP limits for subsectors and considered substitutes as only those with lower GWPs. Further discussion regarding the sources EPA is relying on to determine if a substitute is safe (e.g., listed by EPA's Significant New Alternatives Policy (SNAP) Program) can be found below.

In addition to looking at chemicals that could serve as substitutes, EPA is also including in its analysis any potentially available not-in-kind technologies (e.g., finger-pump bottles that would not use any chemical propellant in lieu of aerosol cans) for purposes of subsection (e)(4)(B)(i)(I). Such an approach is consistent with the common understanding of the plain language definition of "substitute." For example, Merriam Webster defines substitute as a thing that "takes the place of function of another" and the Oxford dictionary similarly notes a substitute is a "thing acting or serving in place of another." In general, not-in-kind technologies can serve the need of some applications, so it is appropriate to include them within the scope of assessing safe and technically achievable substitutes. It would be unnecessarily limiting to exclude from the scope of the analysis a technology that performs the same general function for the application as the current HFC in use does. EPA also acknowledges that

market pressure from the HFC phasedown may encourage a transition into not-in-kind technologies (and non-HFCs) by limiting the supply of HFCs on a GWP-weighted basis, while the Technology Transitions Program prohibits the use of certain HFCs in certain sectors and subsectors. There is also precedent for considering not-in-kind technologies under CAA Title VI, such as the SNAP Program and Nonessential Product Bans, and the AIM Act Technology Transitions Program, all of which also evaluate not-in-kind substitutes as possible alternatives to ODS and HFCs, respectively.

EPA is aware that a transition to certain substitutes will require changes to how the HFCs are used in the application (e.g., accommodating a flammable HFC in the manufacturing process). Shifts to not-in-kind technologies will inherently require a change in manufacturing and/or the product, so it would be a consistent approach to also not outright exclude substitute chemicals that would similarly require a change in manufacturing process or the product.

EPA does not want to unnecessarily limit the scope of the substitute analysis at this point in time, and therefore is considering a wide range of possible safe and technically achievable substitutes. The phasedown of HFCs is still nascent, and, at this point, we cannot know the full breadth of technologies that will be developed as replacements for the current HFCs in use.

The Agency is proposing to assess this criterion, specifically that a substitute is safe, technically achievable, and available, on an application-wide basis. For applications that use multiple HFCs, a substitute would need to be able to replace all HFCs used (or multiple substitutes that replace all individual HFCs would need to be available). For applications that have sub-applications (e.g., defense sprays include those intended for humans and those intended for animals), there would need to be a viable substitute for known sub-applications. EPA's interpretation is that it would be unreasonable to consider an application as having met this criterion and thereby ineligible for renewal unless all known sub-applications can successfully transition away from their currently used HFC(s).

EPA's evaluation of each application is not intended to be a company-specific review; the commercialization⁴ of a

substitute by one sub-application suggests the substitute is safe or technically achievable for the entire application barring evidence, such as testing data, to the contrary. However, there are additional barriers to commercialization, which are considered when assessing if the identified substitute is available for an entire application. In addition, EPA's interpretation of the statutory language is that applications are intended to be viewed as a whole and not necessarily renewed by sub-application. Specifically, the listing of the applications in subsection (e)(4)(B)(iv)(I) does not break down the application into sub-applications (e.g., "defense sprays" is not listed as multiple separate applications, e.g., "personal defense sprays," "law enforcement defense sprays," and "bear defense sprays"). Similarly, for applications that use multiple HFCs and have specific uses for the individual HFCs, it would not be reasonable to assess this criterion as being met if an application does not have an available safe and technically achievable substitute for each HFC. It is EPA's opinion that Congress did not intend for an application to lose its eligibility for ASAs if it could only transition some, but not all, of the HFCs currently used in the application.

EPA reviewed a range of sources in developing its assessment of the availability of safe, technically achievable substitutes for each application at issue here. Sources include, but are not limited to: manufacturer announcements; information provided by stakeholders under part 84 reporting requirements and other communications; relevant Federal and State regulations; evaluations carried out under the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) and the SNAP Program; standards from industry, standard-setting bodies (e.g., American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)), and the U.S. Government (e.g., the U.S. Food and Drug Administration's (FDA) standards for MDIs); and peer-reviewed technical reports. The Technical Support Document (TSD) "Draft Review of Applications in the American Innovation and Manufacturing (AIM) Act Section (e)(4)(B)(4)" contains a comprehensive array of sources we looked at for each application, and EPA is taking comment on other relevant sources that should be considered.

internationally) for use in the application. "Commercialization" is not intended to be equated with "available," as explained in more detail in the main text.

³ While the AIM Act calls for reduction of HFC production and consumption on an EV-weighted basis, EV and GWP are numerically equal. Lower GWP is an important consideration for whether a substitute is safe, so EPA is using GWP instead of EV in the discussion in this section of the rule.

⁴ EPA is using the term "commercialization" to mean that the substitute is commercially available and actively being used in an application's equipment or sold on the market (domestically or

As noted, EPA is considering the listings under the SNAP Program as part of its assessment. The SNAP Program has an established history evaluating substitutes for ODS, many of which are also possible substitutes for HFCs. Where relevant, in its assessment of the availability of safe substitutes, EPA considered information from the SNAP Program, including the listings themselves and the information underlying SNAP Program decisions. The SNAP Program does not evaluate substitutes for semiconductor etching and cleaning of CVD chambers. Some military applications are covered under the SNAP Program. In other cases, such as MDIs and SCPPU foams, while these applications are within the scope of the SNAP Program, there may be other sources of information (e.g., the FDA, company information) that may be more appropriate.

In its evaluation of substitutes and related decisions (e.g., to list as acceptable or unacceptable), the SNAP Program carries out a comparative risk evaluation and considers whether a substitute to an ozone-depleting substance presents human health and environmental risks that are lower than or comparable to such risks from other substitutes that are currently or potentially available for the same uses. The human health risks analyzed include safety, and in particular, flammability, toxicity, and exposure (of workers, consumers, and the general population) to chemicals with direct toxicity; environmental risks include ozone depletion potential (ODP) and GWP. Information and data relied upon in the SNAP Program are directly relevant to EPA's assessment of substitutes in this rulemaking, and therefore EPA has pulled from and relied upon SNAP Program assessments as appropriate.

EPA evaluates substitutes under the SNAP Program on an ongoing basis and over time has listed numerous substances as "acceptable," "acceptable, subject to use conditions," or "acceptable, subject to narrowed use limits." "Acceptable subject to use conditions" indicates that a substitute is acceptable only if used in a certain way. Use conditions can include, but are not limited to, warning labels, compliance with relevant safety standards, and restrictions on where a substitute is used (e.g., HFC-134a is acceptable for FDA-approved MDIs for medical purposes but is not acceptable for a majority of aerosol uses, and some fire suppression substitutes may only be used in typically unoccupied spaces). EPA can also list substitutes as "acceptable subject to narrowed use

limits" under SNAP, indicating that a substitute may be used only within certain specialized applications within an end use and may not be used for other applications within that end use (e.g., SNAP has previously listed some substitutes as acceptable for only narrowed use limits for military or space- and aeronautics-related applications). In listing of a chemical as acceptable or acceptable subject to use conditions directly relevant to the application, the SNAP Program makes an assessment that the benefits outweigh the risks relative to other alternatives; these listings are relevant data to support EPA's determination under AIM Act subsection (e)(4)(B) on whether a substitute is "safe" under the interpretation proposed in this rulemaking.

EPA lists substitutes as "unacceptable" under SNAP if the Agency determines that they may increase overall risk to human health and the environment, compared to other alternatives that are available or potentially available for the same use. EPA has listed substitutes as unacceptable considering the human health criteria described above, as well as the environmental factors considered under SNAP. For example, SNAP has listed certain substitutes as unacceptable due to unusually high ODP, GWP, toxicity and exposure, and flammability (where it is not clear how to mitigate risks sufficiently). Substitutes listed as unacceptable in an end use are prohibited for that use and therefore would not be an available safe or technically achievable substitute for an application under our proposed interpretation of this criterion.

The Agency is also reviewing the evaluations carried out for the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) and relying on information and assessments done in that rulemaking, as appropriate. In establishing restrictions, the Technology Transitions Program factored in the availability of substitutes, considering both safety and technological achievability, among other factors. The Technology Transitions Program relied on information from a wide range of sources when assessing availability, including but not limited to, SNAP, the Montreal Protocol's Technology and Economic Assessment Panel (TEAP), standards bodies, and information provided by industry, States, and environmental non-governmental organizations. Though the Technology Transitions Program looked subsector-wide, not at specific end uses, and did not specifically analyze the applications currently receiving ASAs under

subsection (e)(4)(B)(iv), some of these applications (e.g., defense sprays and SCPPU foams for marine and trailer uses) have similarities with the subsectors currently subject to restrictions. As a result, in carrying out the assessments undertaken in this rulemaking, EPA is considering relevant information from the Technology Transition Program's evaluations.

In the assessment undertaken in this rulemaking, EPA is also taking into account other Federal standards and regulations, both within EPA and from other U.S. Government agencies. For many applications under review in this rulemaking, there are applicable regulations and standards that outline requirements related to the chemicals or technologies used within an application. In these situations, such standards and regulations may in some instances limit use of possible substitutes. In some instances, it may not be possible for a substitute to ever be used. In other instances, applicable regulations may require entities to go through a regulatory approval process that would affect when an application can transition to a substitute. Some examples of regulations and standards we are considering as part of our proposed evaluations include EPA's regulations covering pesticides such as bear sprays and dog sprays (sub-applications of defense sprays) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. 136–136y), the FDA's requirements for MDIs, and the U.S. Federal Aviation Administration's (FAA) requirements for onboard aerospace fire suppression. Additional standards and regulations for each application are discussed further in the relevant chapter of the TSD. EPA invites comment on any other standards or regulations that entities think EPA should consider in determining an application's ability to transition to a substitute.

EPA also considered the work undertaken by the Montreal Protocol's TEAP in the proposed application assessment given the TEAP's analytical work on substitutes and alternative technologies to substances controlled under the Montreal Protocol, including HFCs. TEAP assesses technical and economic information that serves as the basis for parties' assessment of control measures of substances under the purview of the Montreal Protocol. Such information is related to substitutes that may replace the substances controlled under the Montreal Protocol and alternative technologies that may be used without adverse impact on the ozone layer and climate, production and consumption of controlled substances,

emissions of controlled substances, potential alternatives for exempted uses and others, as mandated by the parties. This assessment includes applications listed in AIM subsection (e)(4)(B)(iv). In addition, TEAP develops assessments in response to decisions taken by the parties to the Montreal Protocol, including but not limited to Decision XXVIII/2, which call for an assessment of alternatives to HFCs every five years. EPA particularly looked at the 2022 Assessment Reports by the Medical and Chemical Technical Options Committee, concerning semiconductors, aerosols, and MDIs; the Flexible and Rigid Foams Technical Options Committee (FTOC); and the Fire Suppression Technical Options Committee (FSTOC). TEAP reports have included information on technical achievability and safety. TEAP reports are developed by experts around the world and provide insight into the HFC substitutes currently in use and under development in the United States and globally. As such, EPA is considering relevant information from these reports when carrying out the assessment of available safe or technically achievable substitutes undertaken in this rulemaking.

As described throughout this section, EPA is considering information from a wide range of sources in its assessment of the availability of safe or technically achievable substitutes for the applications receiving ASAs under subsection (e)(4)(B)(iv)(I), and no one source will be determinative for this criterion. Further information about sources consulted for each application can be found in Section V of this preamble and the TSD. EPA invites comment on its interpretation of “no safe or technically achievable substitute will be available” and the sources it is considering in its assessment of this criterion.

B. How is EPA interpreting the insufficient supply of regulated substances criterion?

Under the second criterion for renewal of an application’s eligibility to receive ASAs, EPA must determine that “the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers . . . , including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application” (42 U.S.C. 7675(e)(4)(B)(i)(II)). As described here and in the sections of the proposed rule discussing each of the six applications, a determination that there is insufficient supply could be based on a number of

different factors, including the available domestic supply of the HFC(s) at issue, demand for said HFC(s), and supply chain constraints particular to a given application (e.g., federally required purity specifications). Priority access to allowances through ASAs has the potential to address insufficient supply of HFCs by allowing entities that use HFCs in an eligible application to more easily procure HFCs from a domestic supplier by conferring allowances to authorize production or import or to import the HFCs themselves.

In this proposed rulemaking, EPA is interpreting this criterion as requiring an assessment related to the supply of the HFC(s) currently used in an application’s equipment or to manufacture the application’s products for use. Under this proposed interpretation, EPA would not evaluate HFC(s) currently used exclusively for research and development in assessing whether there is insufficient supply. EPA recognizes that the research and development process may find various alternatives to be unsuitable for an application. Therefore, it would be premature to consider supply of potentially unsuitable HFC alternatives until such time as they have been commercialized or are close to commercialization. Further, it could also have the perverse effect of limiting research into alternatives if an application’s initial research could prematurely contribute to removal from eligibility for ASAs.

EPA is proposing to consider regulated substances supplied by chemical manufacturers in its assessment of supply. EPA interprets the reference to regulated substances “from chemical manufacturers” in 42 U.S.C. 7675(e)(4)(B)(i)(II) as direction from Congress to assess supply from chemical manufacturers only, and that this direction could cover both virgin and recovered and reprocessed HFCs. EPA is proposing to include HFCs produced domestically and those that are produced abroad and imported in its assessment of supply under this criterion. Congress directed EPA to consider regulated substances “from chemical manufacturers . . . , including any quantities of a regulated substance available from production or import” in its assessment under 42 U.S.C. 7675(e)(4)(B)(i)(II). Because of Congress’s reference to production and import of regulated substances, and the lack of any language suggesting that chemical manufacturers should be read as limited to only U.S. producers, EPA intends to consider imported material from foreign HFC producers in addition to regulated substances from domestic

producers. As a result, EPA is proposing not to consider HFC supply held by and available to entities that do not produce or import HFCs in its assessment of this criterion. This would exclude quantities of HFCs held by entities that do not produce or import HFCs with allowances, potentially including reclaimers, distributors, HFC blenders,⁵ and HFC repackagers. EPA considers this proposed interpretation to be most consistent with the statutory language in 42 U.S.C. 7675(e)(4)(B)(i)(II).

The Agency is proposing to consider multiple sources of data in its evaluation of whether supply of a regulated substance is insufficient to accommodate an application. Specifically, in developing the analysis for each application, EPA has drawn information regarding the total expected HFC consumption in the United States, global production of individual HFCs used in the applications, manufacturer announcements regarding production of specific HFCs, past and projected market trends for an application that can inform projected demand for the HFC(s) it uses, and allowance usage by application to date, including conferrals, imports, and open market purchases by ASA holders, as well as expenditures of conferred allowances by suppliers to ASA holders. EPA is intending to consider data from all of these sources collectively in order to gain a more complete picture of projected supply for the relevant individual HFC(s), rather than relying on one data point. EPA is taking comment on these and any other sources the agency should consider when assessing insufficient supply.

EPA is proposing to assess insufficient supply on an application-wide basis. If an application uses multiple HFCs, and the supply of at least one of those HFCs is insufficient to accommodate the application, EPA would consider the criterion met for the application. EPA interprets 42 U.S.C. 7675(e)(4)(B)(i)(II) to require the Agency to review the supply of the regulated substance for each regulated substance an application uses. If there is an insufficient supply for one HFC, EPA would determine that this criterion is met, and the application would continue to be eligible for ASAs, assuming the first criterion regarding substitutes is also met. EPA is proposing

⁵ For a discussion on the difference between producing HFCs consistent with the AIM Act and blending HFCs to make various refrigerant blends, see “Response to Comments”, pg. 193, Docket ID No. EPA-HQ-OAR-2021-0044, associated with the Allocation Framework Rule (86 FR 55116) and the discussion in the 2024 Allocation Rule (88 FR 46863).

that such an approach is the best interpretation of the AIM Act direction in 42 U.S.C. 7675(e)(4)(B)(i)(II) that if both criteria are met, “the Administrator shall authorize the production or consumption, as applicable, of any regulated substance used in the application.” A converse approach would result in EPA not renewing the ASA eligibility of an application that has no available substitutes and there is an insufficient supply available of a regulated substance used by that application. EPA is interpreting the AIM Act to provide ASAs to an application where at least one regulated substance that manufacturers are capable of securing is insufficient to accommodate the application, even if the supply of a different regulated substance is not insufficient.

In addition to looking generally at the supply of HFCs, EPA is also considering relevant restrictions, if any, on the type of HFC or supplier of HFCs that would further limit supply to a particular application. For example, FDA regulations govern use of pharmaceutical-grade HFCs by MDI manufacturers. Facilities manufacturing the regulated substances must comply with FDA regulations, and there are a limited number of purifiers. EPA is considering any applicable relevant Federal regulations and standards (examples listed above in Section IV.A.), including required regulatory approvals and purity levels, that could limit the supply of the HFC(s) used within an application.

C. What is EPA’s proposed framework for renewing applications?

In outlining the requirement that EPA review the applications eligible for ASAs at least every five years, the AIM Act states that if EPA determines “that the requirements described in subclauses (I) and (II) of clause (i) are met” then the EPA will renew the application’s eligibility to continue to receive ASAs (42 U.S.C. 7675(e)(4)(B)(v)(II)) (emphasis added). Accordingly, EPA interprets the statutory language to mean that both criterion (I) of clause (i) (that a substitute is not available) and criterion (II) (that supply is insufficient) must be met for an application to be renewed as eligible for ASAs. If either or both criteria are not met as of January 1, 2026, EPA proposes to not renew an application’s eligibility to receive ASAs. Put another way, if EPA determines, for example, that supply is not insufficient to accommodate an application as of January 1, 2026, EPA would propose to not renew that application’s eligibility

for ASAs, regardless of whether a substitute is available.

If both statutory criteria are met as of January 1, 2026, EPA intends to assess whether an application’s fulfillment of a criterion may change over the following five-year period. The outcome of this assessment would be determinative of how long EPA will deem an application eligible to receive ASAs. For example, if EPA determines that there is no substitute available as of January 1, 2026, but a substitute will be available by January 1, 2028, EPA would renew the application’s eligibility to receive ASAs for only two years (*i.e.*, calendar years 2026 and 2027). Similarly, if supply is deemed insufficient to accommodate the application as of January 1, 2026, but the market will change such that supply will not be insufficient to accommodate the application as of January 1, 2028, EPA would renew the application’s eligibility to receive ASAs for only two years (*i.e.*, calendar years 2026 and 2027).

If EPA determines that an application has a safe or technically achievable substitute available that is a regulated substance, EPA proposes to evaluate the supply of the substitute HFC and assess if supply of the substitute HFC is insufficient to accommodate the application. If the Agency did not do this, the application would not be eligible for renewal because it had met the substitute criterion, regardless of the supply of this substitute HFC; EPA sees this as counter to Congress’s intent when it established priority access to allowances for these applications. Further, it is EPA’s assessment that it would be counterproductive to an application’s efforts to transition away from the currently used HFC(s) if EPA did not consider the supply of the HFC substitute when assessing eligibility for renewal for ASAs (*i.e.*, if an application had insufficient supply of the substitute HFC, an entity may be forced to return to using its original HFC). Under the framework proposed in this rulemaking, if EPA determines there is an HFC substitute, but there is insufficient supply of that HFC substitute, EPA would continue to list the application as eligible for ASAs. This approach would allow an entity transitioning to a lower-GWP HFC to remain eligible to receive allowances until supply of that lower-GWP HFC is no longer insufficient (or a non-HFC substitute is identified).

EPA is also proposing that if an application is eligible to be renewed for ASAs for less than five years, the application will not be reviewed for eligibility for ASAs ahead of the next five-year renewal period. The direction

in the statute under AIM subsection (e)(4)(B)(v) is to review each “application receiving an allocation of allowances under clause (i) or (iv) . . . not less frequently than once every 5 years,” and, if the criteria are met, EPA shall renew the application “for renewable periods of not more than 5 years.” EPA interprets this language, coupled with the lack of language in the statute directing EPA to do another review of an application that is no longer eligible for allowances at the end of its renewal period, as direction that EPA is not required to re-review this application for eligibility for ASAs ahead of the next five-year period. Congress’s direction to undertake a renewal is specific to applications receiving ASAs under 42 U.S.C. 7675(e)(4)(B)(i) and (iv). If an application is renewed for only two of five years at this stage, when the next renewal period arises, it would not be receiving ASAs under 42 U.S.C. 7675(e)(4)(B)(i) or (iv). Therefore, EPA is proposing that the best interpretation of the AIM Act language is that once EPA determines that an application is no longer eligible for ASAs, EPA would not re-review that application at any future time. If an application is determined to no longer be eligible for ASAs and an entity is interested in being considered for eligibility for ASAs again, the entity would need to petition the Agency to be evaluated for eligibility, and the Agency would then undertake the relevant petition review process; see Section VI of this preamble for further discussion of the petition process requirements.

V. Review of the Six Applications Listed in the AIM Act

EPA reviewed the six applications listed in AIM Act subsection (e)(4)(B)(iv)(I)—propellant in MDIs; defense sprays; SCPPU foam for marine use and trailer use; the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector; MCMEU; and onboard aerospace fire suppression—as required under 42 U.S.C. (e)(4)(B)(v)(I). Pursuant to that review, in this rulemaking EPA is proposing and seeking comment on whether the criteria for renewal described in Section IV of this preamble are met for any part, or the entirety, of the 2026–2030 time period. This section begins with an overview of total projected U.S. HFC consumption and then proceeds into EPA’s assessment of the criteria for each application and proposed decision regarding whether to renew each application’s eligibility to receive ASAs. EPA provides additional

information in the TSD available in the docket for this rulemaking.

A. Overview of Total U.S. HFC Consumption

This section contains a summary of total projected U.S. HFC consumption. We assess specific HFC supply considerations on an application-by-application basis below. EPA provides additional information regarding this analysis in the TSD.

The global and domestic HFC markets have been rapidly changing since agreement to the Kigali Amendment to the Montreal Protocol in 2016.⁶ The domestic HFC market has been further changing since the passage of the AIM Act in 2020 and the subsequent promulgation of domestic regulations. In 2021, EPA promulgated regulations to implement the required phasedown of HFC production and consumption in the United States. Additional regulations coming into effect, as early as January 1, 2025, will also further alter this overall market and impact demand for certain HFCs. EPA anticipates the market will be dynamic as it responds to these additional regulations and continues adapting to the global phasedown of HFCs.

In the addendum to the HFC Phasedown Regulatory Impact Analysis (RIA) updated for the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023), EPA modeled total HFC consumption to be significantly lower than the limit established by the statutory phasedown cap for all years of the phasedown, assuming compliance with the restrictions. The 2023 Technology Transitions Rule established subsector-level GWP limits and restrictions on the use of certain regulated substances. These requirements take effect as early as January 1, 2025, and as late as January 1, 2028. While some subsectors already use either HFCs that are below the GWP limit or non-HFC substitutes, other subsectors will need to transition away from their currently used HFC to comply with these regulations. In addition, the proposed rulemaking “*Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020*” (88 FR 72216, October 19, 2023) (hereafter “Emissions Reduction and Reclamation Rule”) has proposed requirements that reclaimed and recycled HFCs be used for certain equipment in the refrigeration, air-

conditioning, and heat pump sector and fire suppression sector (onboard aerospace fire suppression, as an application eligible for ASAs, is currently exempt) as early as early as January 1, 2028. If finalized as proposed, these requirements are also expected to limit use of virgin HFCs for specific activities (e.g., servicing for certain refrigeration and air conditioning subsectors).⁷ In general, there is uncertainty associated with these estimates, as they are based on expected industry transitions in response to AIM Act rulemakings and predicted market dynamics. If HFC consumption is lower than the amount allowed under the AIM Act in a given year, the result may be that there are more allowances than are needed to meet market demand in that year.⁸ If demand for HFCs is lower than the cap, it is possible that general pool consumption and production allowances, which are currently used to produce or import HFCs for entities that do not hold allowances and entities that use HFCs in an application-specific use, would be available to allow for the production or import of HFCs for use by entities that historically have relied upon ASAs. While current ASA holders can access material produced using general pool allowances or purchase HFCs on the open market, if demand by non-ASA entities is lower than the cap, it is possible that the “leftover” allowances could be used to supply ASA holders and therefore decrease the need for ASAs. It is also possible that all allowances are used, and the HFCs that are not sold in that year are stockpiled in anticipation of future needs.

The Agency cannot fully predict shifts in chemical production, domestically and internationally, that may occur. As the HFC phasedown progresses, EPA anticipates suppliers may focus their business on supplying lower-GWP HFCs, since production and consumption of these lower-GWP HFCs requires the expenditure of fewer allowances for the same volume of

substance.⁹ At the same time, sectors that are not yet ready to transition and are not covered by the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) may continue to use higher-GWP HFCs and could grow in size.

EPA also does not yet have data on how the market is reacting to the 2024 stepdown in HFC allowances (from 90 percent of the HFC consumption baseline to 60 percent of baseline); at the time of this proposal the market is only a few months into adjusting to the 2024 HFC stepdown, and EPA has received only one set of quarterly reports. Among other things, data on market reactions could inform how the market will react to the next large stepdown in 2029 (from 60 percent of baseline to 30 percent of baseline). For example, the decrease in available consumption allowances could encourage users of HFCs to transition faster than projected. However, given the significant amount of HFCs in inventory at the end of 2022, the transition away from HFCs could also be slower than projected. Though it seems likely that demand could be below the cap for the 2025–2028 period based on existing regulations, it is uncertain if 2029 (the fourth year of the five-year renewal period) will see similar space between consumption and allowed consumption under the cap. EPA also notes the 2024 stepdown in permissible production and consumption is unique given its scale and that it is occurring early in the overall AIM Act implementation. There will be significantly more information regarding the state of the HFC market after the January 1, 2024, stepdown at the time EPA is finalizing this proposal, and EPA intends to analyze available data to inform its decisions regarding whether supply of individual HFCs is insufficient to accommodate the individual applications.

In addition, there are also other constraints on supply of specific HFCs used in the six applications that EPA is taking into consideration (e.g., purity specifications required by Federal standards and regulations and limited number of producers), as explained in more detail in Sections V.B through V.G. of this preamble. Supply chain dynamics for each of the six

⁷ See Emissions Reduction and Reclamation Rule (88 FR 72216, 72292, October 19, 2023).

⁸ The actions taken pursuant to subsection (h) and (i) of the AIM Act did not propose to and did not accelerate the HFC phasedown. The RIAs associated with those actions did not analyze an acceleration of the HFC phasedown. Rather, HFCs will continue to be available consistent with the phasedown codified at 40 CFR part 84, subpart A, and this action does not propose to change that phasedown schedule. Even if the requirements finalized pursuant to subsections (h) and (i) in effect reduce the production or consumption of HFCs used in particular sectors or subsectors faster than the scheduled reductions under the AIM Act, that does not make those rules an acceleration under subsection (f).

⁹ In the Allocation Framework Rule, EPA established a system whereby allowances are measured on an EV equivalent basis. 86 FR at 55142. To determine the total number of allowances needed, producers and importers multiply the quantity of the HFC they seek to produce or import by its EV. For example, an importer would need to expend 143 consumption allowances to import 100 kilograms (kg) of HFC–134a. Given the variation in EVs, one would need to expend 5.3 allowances to import 100 kg of HFC–152a.

⁶ The United States ratified the Kigali Amendment in October 2022.

applications could affect whether general pool allowances would be able to be used to provide HFCs for each application.

B. Propellants in Metered Dose Inhalers

EPA has been allocating ASAs for regulated substances used for propellants in MDIs in accordance with subsection (e)(4)(B)(iv)(I)(ff) of the AIM Act. In the Allocation Framework Rule, EPA defined a “metered dose inhaler” as “a handheld pressurized inhalation system that delivers small, precisely measured therapeutic doses of medication directly to the airways of a patient. MDIs treat health conditions such as asthma and chronic obstructive pulmonary disease and are approved for such use by the U.S. Food and Drug Administration (FDA)” (40 CFR 84.3). Patients using MDIs to treat pulmonary conditions work closely with their healthcare provider to identify the right treatment for their condition. Pharmaceutical grade HFC–227ea and HFC–134a, purified from technical grade HFC–227ea and HFC–134a, respectively, are both used in MDIs as a propellant.

EPA is proposing to determine that no safe or technically achievable substitute will be available for propellants in MDIs and that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate this application through calendar year 2030. Therefore, EPA proposes to renew the eligibility of entities using regulated substances for propellants in MDIs to receive ASAs for the five-year period of calendar years 2026 through 2030.

1. Availability of Safe and Technically Achievable Substitutes

EPA has not identified substitutes that it would propose to deem safe and technically achievable that are available for propellants in the metered-dose inhalers application at this time. In assessing the availability of substitutes for MDIs, EPA reviewed information from sources such as the FDA, the EPA SNAP Program, the TEAP’s Medical and Chemicals Technical Options Committee (MCTOC), industry, scientific journal articles, and more, which is described in greater detail in the TSD included in the docket for this proposed action. After reviewing relevant information and analyses, EPA is aware of two potential replacements for HFC–134a and HFC–227ea as propellants in MDIs, specifically HFO–1234ze(E) and HFC–152a.

MDIs, including those containing an alternative propellant other than HFC–

134a or HFC–227ea, are subject to the approval requirements under section 505 of the Federal Food, Drug and Cosmetic Act. The process to develop an MDI with a new propellant is complex and will take time. A sponsor (*i.e.*, MDI manufacturer) will need to reformulate the MDI product to use the new alternative propellant and conduct a development program to obtain data, including clinical data, with the new MDI product. If the development program is successful, a sponsor will then need to submit an application to the FDA for approval; the review timeline for a new drug application is 10 to 12 months. The overall process to develop an MDI product containing a new alternative propellant is expected to take years.

EPA regularly consulted with the FDA throughout development of this proposed rule, and the reformulation of the majority of MDIs with an alternative propellant may extend beyond the end of the renewal period of 2030. EPA is aware that a few MDI manufacturers have begun the development process, some of whom are expecting to soon begin Phase 3 trials and FDA has stated that it is possible that they may receive new drug applications for a small number of MDI products with alternative propellants by 2030. However, these new drug applications will need to undergo FDA review. For new drug applications that receive FDA approval, the commercialization plans for new MDIs are unknown but is anticipated to take additional time. Unlike for some of the other uses receiving ASAs where commercialization of substitutes across the entire application after those products are first available on the market may take a few years, for MDIs, EPA anticipates that it will take many years before alternatives are available across the application. That is, it will take time for reformulation, approval, and commercialization to occur for each of the individual MDI products used to treat pulmonary disease. For example, manufacturers of generic MDIs may face delay in transitioning to alternative propellants, as generic drug products must be shown to be a duplicate of, and bioequivalent to, a previously approved drug product and rely on FDA’s finding that the previously approved product is safe and effective. Applicants request approval for generic drug products, including MDIs, in Abbreviated New Drug Applications (ANDAs). FDA provides its recommendations for establishing bioequivalence in its product-specific guidances, which for orally inhaled products like MDIs, have

generally included some combination of in vitro and in vivo studies, along with recommendations related to the formulation and device. FDA committed to review 90% of standard original ANDAs within 10 months from the date of submission, but often multiple review cycles are necessitated by application quality. This review time can be extended if a site/facility is not ready for inspection. The timing of ANDA approval also depends on, among other things, the patent and exclusivity protections for the previously approved product.

According to the MCTOC 2022 Assessment Report, the transition from HFC–134a and HFC–227ea to HFC–152a and HFO–1234ze(E) in MDIs is expected to begin in non-Article 5 countries¹⁰ in 2025 and continue through at least 2032, and no other feasible, lower-GWP MDI propellants have been identified in the United States and abroad.¹¹ HFO–1234ze(E) and HFC–152a, along with other aerosol propellants, are listed as acceptable by EPA’s SNAP Program and are commercially available and currently used in commercial and/or technical aerosol products. Furthermore, they also have most of the requisite physical properties to function as a propellant in MDIs with significantly lower GWPs than the current HFCs in use; however, neither propellant has significant use in pharmaceuticals today and will require extensive clinical research and FDA approval before they could replace the current HFCs.

In light of the above analysis, it is EPA’s assessment that there is no information before the Agency at the time of this proposal to suggest that there would be a safe and technically achievable substitute available prior to the next five-year review.

2. Supply

As previously mentioned, pharmaceutical-grade HFC–134a and HFC–227ea (also known as HFA–134a and HFA–227ea) are currently used as propellants in MDIs.

As part of the manufacturing process for MDIs, technical grade HFC–134a and HFC–227ea are purified into pharmaceutical-grade HFC–134a and HFC–227ea. Documents the FDA requires as part of the drug approval process must specify the facility manufacturing the HFC propellant. The supply of pharmaceutical-grade HFC–

¹⁰ Non-Article 5 countries are defined as developed countries under the Montreal Protocol. For a list of Article 5 and non-Article 5 countries see <https://ozone.unep.org/classification-parties>.

¹¹ See <https://ozone.unep.org/system/files/documents/MCTOC-Assessment-Report-2022.pdf>.

134a comes from technical grade HFC-134a that is produced at a limited number of production facilities in other countries, including a single plant in the United States, and then purified at a single facility in the United Kingdom and reimported to the United States for consumption in MDIs. In its analysis of other applications, EPA has noted that HFC-134a is the most widely available HFC. However, this fact does not equate to a sizeable supply for the MDI application because MDI manufacturers are not easily able to switch suppliers of pharmaceutical-grade HFCs. Unlike other applications, where EPA has discussed the diverse number of chemical suppliers for HFC-134a globally, in this instance the options are constrained.

As components of drug products, the use of HFCs in MDIs are subject to certain FDA requirements. FDA's Current Good Manufacturing Practice (CGMP) requirements under the statute (21 U.S.C. 351(a)) apply to drugs, including their components (21 U.S.C. 321(g)(1)), and include requirements related to methods, facilities, controls, manufacturing, processing, packing, and holding to assure that drugs meet requirements for safety, identity, strength, and quality and purity. FDA has also promulgated CGMP regulations for finished pharmaceuticals in 21 CFR 210 and 211. These CGMP regulations also contain requirements for manufacturers in their handling, control, storage, and testing of components used in manufacture of drug products. HFC purification occurs in dedicated facilities that are subject to FDA CGMP requirements for drugs and devices, as well as other international quality standards, as MDI manufacturers may serve markets in addition to that of the United States. If an MDI manufacturer wanted to change their supplier of pharmaceutical grade HFC, this would trigger FDA review. MDI manufacturers who change suppliers of pharmaceutical grade HFCs would need to provide data to ensure the safety and quality of the new propellant and submit the data to the FDA for review and approval. This data may include pharmacology/toxicology data, product quality data of the new propellant source, and a comparison of the current and proposed new propellant sources, and quality data that demonstrates the drug made with the new propellant meets all applicable quality requirements. Depending upon the comparability of the HFA sources, additional data may be requested by the FDA (21 CFR 314.70).

There are three suppliers of pharmaceutical-grade HFC-227ea for

use in the United States. One of the suppliers is a producer that purifies the technical grade HFC-227ea at one of their facilities in the United States. The second produces and purifies the pharmaceutical-grade HFC-227ea at their facility in Germany, which is then imported by that producer for distribution to domestic MDI manufacturers. The third supplies pharmaceutical-grade HFC-227ea to the United States from their facility in the United Kingdom. At least two of these facilities also supply pharmaceutical-grade HFC-227ea globally for MDI manufacture. Producers of pharmaceutical-grade HFC-227ea must also comply with FDA requirements as described above, which limits their ability to switch to other suppliers of HFC-227ea.

3. What is EPA proposing regarding eligibility for application-specific allowances?

EPA is proposing to renew the eligibility of entities using regulated substances for propellants in MDIs to receive ASAs for the five-year period of calendar years 2026 through 2030. EPA is proposing to determine "that the requirements described in subclauses (I) and (II) of clause (i) are met" in accordance with the requirements of 42 U.S.C. 7675(e)(4)(B)(v)(II). Specifically, for the reasons outlined earlier in this section, EPA is proposing to determine that no safe or technically achievable substitute will be available for propellants in MDIs and that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate propellants in MDIs through calendar year 2030. EPA is proposing to determine that the supply of both HFC-134a and HFC-227ea is insufficient to accommodate the propellants in MDIs application.

C. Defense Sprays

Per subsection (e)(4)(B)(iv)(I)(bb) of the AIM Act, EPA has been allocating ASAs for defense sprays since 2021. EPA defined a "defense spray" as "an aerosol-based spray used for self-defense, including pepper spray and animal sprays, and containing the irritant capsaicin and related capsaicinoids (derived from oleoresin capicum), an emulsifier, and an aerosol propellant," (40 CFR 84.3). Within this application, there are four primary uses: bear sprays, dog sprays, personal defense sprays, and law enforcement sprays. The defense sprays chapter in the TSD contains more details on these product categories. HFC-134a is the

primary propellant currently used for the majority of defense sprays and is the only HFC for which EPA has allocated allowances since 2022. After analyzing information relevant to the statutory criteria, as outlined in this section and the TSD, EPA is proposing two options—to not renew the eligibility for entities in this application to receive ASAs or to renew for two years. EPA is also taking comment on the possibility of renewing for a full five-year period.

1. Availability of Safe and Technically Achievable Substitutes

There has already been commercialization of alternatives to HFC-134a as a propellant in some defense spray uses, and transition is underway for other parts of the application. Thus, while many defense sprays currently use HFC-134a as a propellant, EPA is aware of entities that have already successfully commercialized alternative propellants, including non-HFCs, in some of their products. The availability of safe and technically achievable substitutes for this application will continue to expand, and EPA will take any additional information into account in the final rulemaking.

All dog defense sprays commercialized in the United States and registered with EPA under FIFRA use a non-HFC propellant and have never used an HFC propellant; from company communications, EPA is aware that at least three dog sprays utilize compressed nitrogen gas. In addition, EPA is aware from company communications that two bear sprays using propellants other than HFC-134a are available domestically, one using a non-HFC, HFO-1234ze(E), and one utilizing a lower-GWP HFC, HFC-152a. Both products have been available for multiple years. In addition, there is one bear spray that is manufactured domestically, but sold into the Canadian market, that also utilizes HFO-1234ze(E). EPA is also aware of at least one defense spray used on humans available in other countries, but manufactured in the United States, that uses HFO-1234ze(E).

The commercialization of defense sprays with alternative propellants suggests that there are safe and technically achievable substitutes to HFC-134a available within this application, but it is not clear that they are immediately available for the entire application. In other words, there are multiple different uses within this application, and many of the uses have similar technical requirements (e.g., large spray volume and distance) and safety considerations (e.g.,

flammability). Thus, EPA's assessment is that while there are certain differences amongst the uses, generally a propellant commercialized for one use should be safe and technically achievable for another use as explained in more detail below. It is EPA's understanding that defense sprays have industry-set technical requirements that differentiate them from other aerosols, but that outside of FIFRA requirements for bear sprays,¹² defense sprays do not need to be certified or comply with Federal regulatory standards to be sold in the United States. EPA is aware of some voluntary standards for law enforcement sprays, explained in more detail in the defense sprays chapter of the TSD, that specify performance requirements and test methods for the evaluation of these sprays. EPA's understanding is that defense sprays do not need to be certified under this standard to be sold into the law enforcement market.

While some entities have successfully commercialized alternative propellants, there are steps other entities will need to undertake in order to use these alternatives, such as their own research and development process, approval under FIFRA for bear sprays, and potentially changes to manufacturing facilities. For example, EPA is aware of at least two defense spray manufacturers that had made significant investments to potentially transition to a non-HFC as a propellant that did not pursue the transition due to performance concerns.¹³ The multiple defense spray products commercialized using alternative propellants suggests that past challenges can be overcome, though EPA acknowledges that commercialization of alternative

propellants across this entire application may take a few years.

Outside of what has already been commercialized by some defense spray companies, EPA is not aware of any other substances under consideration as safe and technically achievable substitutes for this application. Multiple propellants, including HFC-152a, HFO-1234ze(E), and hydrocarbons, have been listed as acceptable under SNAP and identified as technically and economically feasible alternatives for propellants in aerosols by the TEAP's MCTOC. However, there are additional technical demands in the defense spray application that provide unique challenges as compared to other types of aerosol applications. For example, given their use for personal protection and crowd control, defense sprays need to have a larger spray cloud and longer spray distance, and stakeholders have noted that law enforcement's use of defense sprays alongside stun guns (*e.g.*, Tasers) poses specific concerns around flammability. Therefore, alternatives identified as acceptable for aerosols, such as hydrocarbons, may not be available for all defense spray uses. SNAP lists substitutes for aerosols at the end use level, not the application level (*e.g.*, the Agency has listed substitutes for aerosol propellants, which would allow for those substitutes in defense sprays), and TEAP's MCTOC has not specifically discussed or evaluated defense sprays as an individual use. More information about the specialized nature of defense sprays can be found in the defense sprays chapter of the TSD.

To inform determinations in this rulemaking, EPA invites comment on whether the alternatives commercialized for some defense spray uses are not available for the entire application, including any supporting data and information; EPA is particularly interested in data regarding flammability of alternative propellants at the concentrations found in defense sprays and testing results demonstrating safety risks in the situations where defense sprays are typically utilized.

2. Supply

The majority of defense sprays currently use HFC-134a as their propellant. HFC-134a is the most widely produced HFC globally and is produced in substantial quantities in multiple countries, including the United States. In 2022, domestic production of HFC-134a was 61,377 metric tons (MT), making up 46 percent of U.S. HFC production on a mass basis; this production amount is also nearly double the domestic production amount of the HFC produced in the second highest

quantity. EPA is aware that one domestic producer of HFC-134a is transitioning its facility to produce a different chemical.¹⁴ In addition, there are multiple entities that import HFC-134a. In 2022, 7,363.1 MT of HFC-134a were imported into the United States. Overall, HFC-134a made up approximately 32 percent of total U.S. HFC consumption¹⁵ in 2022 on a mass basis. This application has very limited demand for HFC-134a in comparison to U.S. consumption of HFC-134a; allocated ASAs for this application in 2024 are equivalent to 0.1 percent of calculated domestic consumption of HFC-134a in 2022, on a metric tons of exchange value equivalent (MTEVe) basis. In addition, at the end of 2022, suppliers held 51,902.9 MT of HFC-134a in domestic inventory, which is equivalent to about 101 percent of calculated consumption of HFC-134a in 2022, and 1,036.8 MT of HFC-134a was reclaimed; the entities both holding this material in inventory and reclaiming these HFCs are broader than EPA's interpretation of chemical manufacturers (see Section IV.B for more information), so not all of this HFC-134a may be considered available supply.

However, as described in more detail in Section V.A of this preamble, the overall market for HFCs and for HFC-134a in particular is likely to continue changing in light of the AIM Act and other restrictions. There is uncertainty regarding how the market is reacting to the stepdown of the level of permissible production and consumption of HFCs that took effect on January 1, 2024, and EPA anticipates further market changes as a result of the stepdown taking effect on January 1, 2029. However, global production capacity is expected to remain substantial over the coming years, given production will continue in countries on later HFC phasedown schedules, and EPA expects continued domestic and global demand for HFC-134a. EPA will analyze any available information on market adjustment to the January 1, 2024, stepdown and regulations effective January 1, 2025, in finalizing this rulemaking.

In considering supply of the regulated substance currently used by this application, EPA also notes that the Agency is unaware of any reason why this application cannot use recovered and reprocessed HFCs. For example, EPA is not aware of any specific purity

¹² Defense sprays used to deter bears, dogs, and other animals are considered pesticides under FIFRA, so must comply with related requirements, including approval for the inert ingredients (*e.g.*, the propellant) used in the product. In addition to HFC-134a, both HFC-152a and HFO-1234ze(E) are approved for use as inert ingredients for non-food pesticidal use (*e.g.*, animal sprays). Transitioning a product to another approved propellant is a relatively simple process that only requires submission of product performance data (*i.e.*, no tests related to safety, impacts on human health, etc.), and approval can occur in five to seven months. This action would be a Pesticide Registration Improvement Act B680 or B681. See <https://www.epa.gov/pria-fees/pria-fee-category-table-biopesticides-and-pollution-prevention-division-bppd-amendments> for more information.

¹³ Written testimony submitted for the record from Safariland and Security Equipment Corporation for the U.S. Senate Committee on Environment and Public Works hearing on the AIM Act. <https://www.epw.senate.gov/public/index.cfm/2020/3/s-2754-american-innovation-and-manufacturing-act-of-2019-written-testimony-and-questions-for-the-record>.

¹⁴ See <https://www.arkema.com/usa/en/media/news/global/corporate/2022/20221006-two-major-steps-develop-supply-forane-1233zd/>.

¹⁵ Consumption = (Total Production + Production for Feedstock + Imports [Virgin and Used]) – (Exports [Virgin and Used] + Destruction).

requirements for HFCs used in this application. As a result, the supply of recovered and reprocessed HFCs that can be secured from chemical manufacturers is relevant when assessing whether the supply of HFC-134a is insufficient to accommodate this application. The likeliest source of these reprocessed HFCs for defense sprays would be reclaimed refrigerants, which must meet specific purity requirements.¹⁶ Since there are no Federal purity requirements or industry purity standards for HFCs used in aerosols, the purity of reclaimed HFCs is likely the same or higher than the virgin HFCs used in this application. The supply of reclaimed HFC-134a in the United States is substantial and increases the supply of HFC-134a available to this application. However, as is true in many other parts of EPA's supply analysis, there is uncertainty regarding the overall supply and demand for reclaimed HFCs.

There is additional uncertainty around the supply and demand for HFC-134a as a result of the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023). GWP restrictions under the 2023 Technology Transitions Rule begin taking effect January 1, 2025, with the latest restriction taking effect on January 1, 2028. Overall demand for HFC-134a could fall since all subsectors subject to Technology Transitions restrictions will not be permitted to use neat HFC-134a, as its GWP of 1,430 is greater than the highest GWP limit (*i.e.*, 700). However, many subsectors subject to Technology Transition restrictions already use chemicals that fall below the GWP restriction levels, and where this is the case EPA does not anticipate any change in demand of HFC-134a. Additionally, some sectors may use blends with HFC-134a as a component where the GWP is below the applicable limit. Moreover, HFC-134a will likely continue to be

used in other applications not subject to these restrictions (*e.g.*, heavy-duty trucks), as well as for servicing existing equipment (*e.g.*, light-duty motor vehicle air conditioning). HFC suppliers may also shift their production and import practices, such that supply of HFC-134a changes. EPA intends to review available information on market shifts that occur when the first set of Technology Transition restrictions take effect on January 1, 2025, and where possible will incorporate any relevant information into the analysis underpinning finalization of this rulemaking. Based on this additional information, at finalization of this proposed rule, EPA may be in a position to determine that the supply of HFC-134a is not insufficient to accommodate this application once all of the Technology Transition restrictions take effect as of January 1, 2028, if not earlier (*i.e.*, as early as January 1, 2026).

EPA also intends to finalize a rulemaking under subsection (h) of the AIM Act, the Emissions Reduction and Reclamation Rule (88 FR 72216, October 19, 2023), in the summer of 2024. EPA proposed a number of requirements including those concerning use of reclaimed HFCs for certain activities. In addition, EPA intends to finalize a rulemaking, "*Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)*" (88 FR 74712, October 31, 2023), later this year; this rulemaking has proposed to ban the use of TCE due to unreasonable risk of injury to human health. If finalized as proposed, this would prohibit TCE from being used as a feedstock to manufacture HFC-134a within eight and a half years from when that rule is finalized. While this could end the production of HFC-134a in the United States,¹⁷ it is unclear how this change would affect overall supply of HFC-134a, as there is currently still global supply of HFC-134a that could be imported into the United States. EPA anticipates being able to consider the projected effects of these other rules prior to finalizing this rulemaking.

Entities do not need to seek or receive ASAs in order to use HFC-134a in defense sprays. Further, entities do not have to expend an allowance to purchase HFC-134a from another entity that has imported or produced the regulated substance. EPA notes that of the six defense spray entities that have received ASAs at some point for calendar years 2022, 2023, and 2024,

three did not receive ASAs in at least one of those years. EPA is also aware of at least two entities selling bear sprays that use HFC-134a that have never applied for, and therefore never received, ASAs. This suggests that at least those two entities were able to acquire HFC-134a on the open market without having ASAs. These facts could suggest that ASAs may not be imperative for entities in this application to access HFC-134a.

In sum, HFC-134a is currently more widely available than other HFCs, and defense sprays' need for HFC-134a is small compared to the overall demand for HFC-134a across a range of sectors. At the same time, there is inherent uncertainty in the HFC market due to future stepdowns and new regulations coming into effect. Further information regarding EPA's assessment of the supply of HFC-134a related to the needs of the defense sprays application can be found in the defense sprays chapter of the TSD.

EPA is also considering the supply of HFC-152a, as it is used in at least one defense spray product, as noted above. HFC-152a is produced in substantial quantities, though the current domestic production of HFC-152a is about half that of HFC-134a, on a mass basis.¹⁸ In 2022, domestic production of HFC-152a was 29,654.9 MT, about 22 percent of U.S. HFC production by mass. There is currently only one U.S. HFC-152a production facility, and that producer has announced plans to increase production by approximately 20 percent by mid-2024.¹⁹ At the time of this proposal, the facility expansion is not yet complete, so EPA cannot say with certainty when it will be available. However, there is also substantial global production of HFC-152a, which also supplies the U.S. market. Multiple entities imported HFC-152a in 2022, importing a total of 5,810.1 MT. Overall, HFC-152a made up approximately 20 percent of total U.S. HFC consumption in 2022 on a mass basis. In addition, at the end of 2022, suppliers held 5,076.3 MT of HFC-152a in domestic inventory, which is equivalent to about 16 percent of calculated consumption of HFC-152a in 2022. The company that has commercialized the bear spray using HFC-152a has never received allowances for HFC-152a, which suggests that at least this entity is able

¹⁶ In alignment with the definition in 42 U.S.C. 7675(b)(9), EPA defined reclaim as "the reprocessing of regulated substances to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 700-2016) that are applicable to that regulated substance and to verify that the regulated substance meets these specifications using the analytical methodology prescribed in section 5 of appendix A to 40 CFR part 82, subpart F" (40 CFR 84.3). Thus, HFC-134a refrigerant that is reclaimed and used by a different user than the one recovering the refrigerant must meet the purity requirements of AHRI 700, *Standard for Specifications for Refrigerants*. That standard, among other things, requires that reclaimed HFC-134a must be visibly clean (that is, no visible solids or particulate), no more than 1.5 percent by volume of air in the vapor phase, no more than 10 parts per million of water by weight, and no more than 0.5 percent by weight of other volatile impurities.

¹⁷ Though there are other pathways to produce HFC-134a, the pathway using TCE is the primary production pathway in the United States, and it is EPA's understanding that it is complex to change production pathways.

¹⁸ See <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub/expanded-hfc-data>.

¹⁹ See <https://www.chemours.com/en/news-media-center/all-news/press-releases/2023/chemours-announces-capacity-increase-of-hfc-152a-providing-reliable-domestic-supply-of-low-global-wa>.

to acquire HFC-152a on the open market without having ASAs.

In addition, HFC-152a has one of the lowest EVs relative to other regulated HFCs, so fewer allowances are needed to import or produce HFC-152a in comparison to the same volume of higher-EV HFCs. For example, an importer would need to expend 143 consumption allowances to import 100 kg of HFC-134a compared to 12.4 allowances to import 100 kg of HFC-152a—a greater than 90% reduction. This means that, from a strictly allowance-focused view, HFC-152a will be easier to acquire than most other HFCs as the phasedown progresses and the number of HFC allowances is reduced. Allowances allocated to an end user may therefore not be necessary to secure production or import of HFC-152a.

Future projections suggest that there could be increased demand for HFC-152a, although there is inherent uncertainty with how industry will respond to the phasedown of HFCs at this early stage. HFC-152a has a GWP that is below all the GWP limits for sectors and subsectors subject to the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023). The 2023 Technology Transitions Rule identified HFC-152a as an available or potentially available substitute for all 13 foam subsectors, aerosol propellants, motor vehicle air conditioning, and household refrigerators and freezers.²⁰ However, there are also multiple other acceptable alternatives, including non-HFCs, and, for subsectors where a transition to another substitute has already occurred (e.g., motor vehicle air conditioning, household refrigerators and freezers), it is highly unlikely that a new transition to HFC-152a would be considered. For subsectors where HFC-152a neat or in blends is likely under consideration, it is not yet known if there will be any significant shift toward use of HFC-152a, particularly as many relevant subsectors have begun to move out of HFCs entirely. For example, the MCTOC 2022 Assessment report notes that a significant proportion of aerosols already use non-HFCs as propellants.

Similarly, the FTOC 2022 Assessment Report highlights that fluorocarbon use in foams has been falling for decades, and foams are largely expected to continue transitioning to non-HFCs, including hydrocarbons, HFOs, and hydrochlorofluoroolefins (HCFOs). Demand for HFC-152a may therefore change in future years as subsectors transition to alternatives from their currently used HFC.

In sum, while there is a reasonably large supply of HFC-152a that is expected to increase over the coming years relative to other HFCs, there is uncertainty around future demand for the reasons described above.

3. What is EPA proposing regarding eligibility for application-specific allowances?

Given the rapidly changing landscape for HFC supply and EPA's assessment of substitute availability application-wide, EPA is proposing two options based on our current analysis and in anticipation of additional available information before this proposed rule is finalized. Specifically, EPA is proposing to finalize one of the following outcomes: (1) No renewal, such that the application will not receive ASAs or (2) Renew eligibility for ASAs for two years, such that ASAs are available for calendar years 2026 and 2027.²¹ EPA is also seeking comment on renewing eligibility for the full five-year period.

As explained earlier in this proposal, an application must meet both criteria to be eligible to receive ASAs. For the reasons described earlier in this section, EPA is proposing to determine that there is not a safe and technically achievable substitute that is immediately available for the entire application, but a safe or technically achievable substitute will be available for the entirety of the defense spray application by January 1, 2028. In other words, EPA proposes to determine that the criterion in subsection (e)(4)(B)(i)(I) is not met for defense sprays starting January 1, 2028. Under this proposed determination, even if EPA received information to determine that supply of the currently used regulated substance was insufficient, defense sprays would not be eligible for renewal as of January 1, 2028, unless they have insufficient supply of a substitute HFC, as discussed in more detail below.

EPA is also proposing to determine that either (1) the supply of HFC-134a is not insufficient to accommodate this

application; or (2) the supply of HFC-134a will not be insufficient to accommodate this application as of January 1, 2028. In other words, EPA proposes to determine that the criterion in subsection (e)(4)(B)(i)(I) is either: (1) not met at all for this application for HFC-134a, and therefore the application would not be eligible to receive ASAs starting January 1, 2026; or (2) not met as of January 1, 2028, and therefore the application would not be eligible to receive ASAs starting January 1, 2028. Under the first option, this means that even if the application does not have a safe or technically achievable substitute available, ASAs would not be available for defense spray manufacturers as of January 1, 2026. For the second option, defense sprays would not be an eligible application for ASAs as of January 1, 2028, regardless of the availability of substitutes.

EPA does not have sufficient information to make a definitive determination on whether supply of HFC-152a is insufficient to accommodate this application at the time of this proposal. We are monitoring this issue and will be seeking information on the alternatives that subsectors subject to Technology Transitions restrictions transition into and how much additional domestic production capacity of HFC-152a comes online in the coming year.

EPA is also taking comment on whether defense sprays should be eligible to receive ASAs for the full five-year period from 2026–2030. A full five-year renewal could be without restriction or could be based on and tailored only to the application's need to purchase HFC-152a. As explained earlier, HFC-152a is used commercially in one bear spray product, so this latter scenario could be relevant if HFC-152a is an available safe and technologically achievable substitute for the entire defense spray application by 2028. Under this scenario, EPA would follow an approach similar to the option proposed for SCPPU foams for marine and trailer uses in Section V.D.3.

EPA intends to review comments and other relevant information received on this proposal to further understand how the market surrounding this application evolves and the availability of substitutes application-wide before EPA finalizes this proposed rule. Specifically, we intend to review additional information on how the HFC market adjusts to the 2024 stepdown, defense sprays' research into alternative propellants and related trials (including relevant data on flammability), what alternatives consumer aerosols transition to (as they are subject to the

²⁰ See 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) TSD “American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: List of Substitutes.” This list is not exhaustive, so it is possible HFC-152a is an available alternative for other subsectors. In addition, EPA did not identify information for products or equipment containing certain substitutes, which may indicate a lack of current commercial demands for the substitutes in those products or equipment. However, this did not automatically remove those substitutes from the list of available substitutes, as commercial demands is only one subfactor that needed to be considered under subsection (i)(4)(B).

²¹ The proposed amendatory text included in this **Federal Register** notice shows only one of the co-proposed options. This is for illustrative purposes and should not be read as EPA favoring one co-proposal over another.

Technology Transitions restrictions starting in 2025), and research into alternative propellants intended to be used in technical aerosols (which are subject to the Technology Transitions restrictions starting in 2028). EPA invites submission of comment and additional data related to these data gaps. EPA will consider this new information, in addition to public comments, in making a final determination for this application.

4. Proposed Restriction Under EPA's Technology Transitions Program

The 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) restricts the manufacture and import of all aerosol products that use HFCs or HFC blends that have a GWP greater than 150. This restriction begins January 1, 2025, for all aerosols except for those specifically listed in the final rule as technical aerosols, which have manufacture and import restrictions starting January 1, 2028. The listed technical aerosols are applications for which EPA received sufficient information through the comment period or through EPA's own analysis indicating that additional time is needed to transition to substitutes due to various technical requirements, such as non-flammability and/or a specific vapor pressure. The list of technical aerosols does not include defense sprays.

The 2023 Technology Transitions Rule exempts applications that receive ASAs (40 CFR 84.56(a)(2)). However, as finalized in the October 24, 2023, rule, if an application no longer qualifies for ASAs, the Technology Transitions restrictions then apply.

While most aerosols are required under the Technology Transitions Program to meet a 150 GWP limit starting on January 1, 2025, the EPA provided additional time to comply with this limit for some technical aerosol uses. Most of the U.S. aerosol industry subject to the January 1, 2025, compliance date has already transitioned to using propellants that meet the 150 GWP limit,²² and therefore has available substitutes for use based on EPA's consideration of the factors listed in subsection (i)(4)(B) (*e.g.*, technological achievability, commercial demands, safety, consumer costs, etc.). By contrast, the uses that received an extension for compliance with the 150 GWP limit until January 1, 2028, 40 CFR 84.54(a)(16)(i)(A)–(O), currently use

HFC–134a (most often as a propellant) and have limitations that require additional time “to reformulate, test, and transition” to ensure availability of substitutes under subsection (i)(4)(B) for these technical uses.

EPA is proposing that defense sprays would be considered under the Technology Transitions Program consistent with technical aerosols, with the corresponding compliance deadlines on the manufacture and import of defense sprays using HFCs and blends containing HFCs with a GWP of 150 or greater beginning January 1, 2028, with a three-year sell-through of those products. Thus, defense sprays manufactured or imported prior to January 1, 2028, could continue to be sold until January 1, 2031. As discussed in Section V.C.1 of this preamble, while some defense spray uses may have substitutes available in the near term that are technically achievable and safe, EPA's proposed assessment under subsection (e)(4)(B) is that such substitutes are not immediately available across all defense spray uses. In particular, the flammability or specific vapor pressure of potential substitute propellants present availability concerns for some uses in the near term. Consideration of technological achievability and safety, as well as other subsection (i)(4)(B) factors, indicates that a compliance date of January 1, 2025, for transition of all defense spray uses is not appropriate, but the approval of substitute propellants as safe under SNAP and TEAP analyses (see Section V.C.1), as well as EPA's assessment that many propellant uses in this subsector have been able to successfully transition to substitutes, provides support for EPA's proposed finding that all defense sprays will have available substitutes by January 1, 2028. We invite comment on whether availability of substitutes for use in defense sprays, particularly considering those factors enumerated under subsection (i)(4)(B), indicates that defense sprays could in fact meet the existing 150 GWP limit restriction if the application ceased being eligible for ASAs on January 1, 2026. We note that given the January 1, 2028, compliance date for the transition of the remaining aerosol sector, comments urging the Agency to provide additional time for compliance beyond that date will need to provide very specific and detailed information in support of that request, speaking to the statute's factors under subsection (i)(4) and in particular the subsection (i)(4)(B) factors.

Under the 2023 Technology Transitions Rule, the labeling requirements are effective at the same

time as the manufacture and import restrictions, which, if EPA finalizes this action as proposed, would be January 1, 2028. Recordkeeping and reporting provisions are effective for all sectors and subsectors under the 2023 Technology Transitions Rule starting January 1, 2025. EPA proposes that the recordkeeping requirements would apply to defense spray manufacturers and importers beginning January 1 of the year that use no longer qualifies for ASAs, and the first report would be due March 31 of the following year. For example, if defense sprays are no longer eligible for ASAs in 2026, manufacturers and importers would need to keep records as required by the 2023 Technology Transitions Rule starting January 1, 2026, and submit their first Technology Transitions report to EPA by March 31, 2027, even if EPA finalizes its proposal that the 150 GWP limit for the manufacture and import of defense sprays using HFCs would not apply until January 1, 2028.

EPA requests comment on the proposal to consider defense sprays consistent with technical aerosols for purposes of the Technology Transitions Program and the restrictions that result from such a classification, such as the GWP limit that would take effect on January 1, 2028, use restrictions, a three-year sell-through window for inventory ending January 1, 2031, and labeling and reporting requirements.

EPA has previously determined that available substitutes for use as aerosol propellants include HFC–152a (GWP 124) and HFO–1234ze(E) (GWP <1) (88 FR 73098, October 24, 2023). EPA is also interested in any supporting data and information related to the availability of substitutes and whether a different timeline is more appropriate for transitioning in this application or for a subset of products in this application.

D. Structural Composite Preformed Polyurethane Foam for Marine Use and Trailer Use

The third application to which EPA has been allocating ASAs to since 2022 is SCPPU foam for marine and trailer uses, in accordance with subsection (e)(4)(B)(iv)(I)(cc) of the AIM Act. In the Allocation Framework Rule (86 FR 55116, October 5, 2021), EPA defined this application as “a foam blown from polyurethane that is reinforced with fibers and with polymer resin during the blowing process, and is preformed into the required shape (*e.g.*, specific boat or trailer design) to increase structural strength while reducing the weight of such structures” (40 CFR 84.3). SCPPU foam is different from other types of

²² See Household and Commercial Products Association (HCPA) and National Aerosols Association (NAA) Technology Transitions Petition to EPA dated July 6, 2021. Available in the public docket at EPA–HQ–OAR–2021–0289–0037.

polyurethane (PU) foams due to its specialized structural properties, and it is preformed into required shapes (e.g., specific boat or trailer design). HFC-134a is the current HFC used in the blowing process for SCPPU foam. After analyzing information relevant to the statutory criteria, as outlined in this section and the TSD, EPA is proposing a range of options—to not renew the eligibility for entities in this application to receive ASAs, to renew for two years, or to renew access to ASAs for five years with allowances determined based on the use of a lower-GWP HFC substitute for HFC-134a. EPA is also taking comment on the possibility of renewing for a full five-year period consistent with the current allowance allocation approach.

1. Availability of Safe and Technically Achievable Substitutes

EPA anticipates that SCPPU foam for marine and trailer uses' commercialization of formulations using alternatives to HFC-134a as blowing agents is well underway and will evolve significantly between issuance of this proposed rulemaking and its finalization. The Agency will consider information collected from regulated entities and other relevant sources through the public comment period and the current reporting requirements to inform a final determination.

EPA is aware, from manufacturer communications and reporting, of two substitutes currently under development for this application—an HFC-152a/cyclopentane blend and an HFO. EPA notes that SNAP has listed both HFC-152a and cyclopentane as acceptable for all PU foams, including rigid PU uses in both marine flotation and commercial refrigeration (the two respective end uses for this application). Based on information from the manufacturers of SCPPU foam for marine and trailer uses, EPA understands that the research and development phase for both potential substitutes is nearing completion and that companies are nearing a phase where they will be able to commercialize use of substitutes. If commercialization occurs as companies anticipate and as shared with EPA, the entire application would be able to use a substitute different from HFC-134a before January 1, 2026. According to the information shared with EPA, one substitute seems close to being commercialized for SCPPU foam for marine use, and the other substitute seems close to being commercialized for SCPPU foam for trailer use. The company that is close to commercializing use of the HFC-152a/

cyclopentane blend performed multiple early trial runs with HFOs, all of which failed to meet their needs, so the company decided to pursue the HFC-152a blend. On this basis, we are proposing to determine that the HFO is not an available substitute application-wide for the five-year period from 2026–2030, given additional research and development trials are needed, as well as the subsequent ramp up to commercialization. EPA understands that often different companies use different blowing agents to produce the same foam. At this time, it is unclear why an HFC-152a/cyclopentane blend cannot be used across the entirety of the application and similarly whether at some future date another blowing agent (e.g., an HFO) might be used application-wide. To inform determinations in this rulemaking, EPA invites comment on any potential reasons why an HFC-152a/cyclopentane blend might not be safe and technically achievable for the entire application, including any supporting data and information, such as trial data. While there are two different end uses in this application, the foam used in both sub-applications is the same (i.e., it is an SCPPU foam).

Other than an HFO and an HFC-152a/cyclopentane blend, EPA is not aware of other safe and available alternatives at this time. There are currently a range of alternatives identified as acceptable by SNAP and as technically proven by the TEAP's FTOC for other PU foams, including rigid PU uses in both marine flotation and commercial refrigeration. Alternatives include a lower-GWP HFC (i.e., HFC-152a), hydrocarbons, and HFOs. However, alternatives identified as acceptable for PU foams are not necessarily available for SCPPU foam, given the unique technical requirements for this foam (e.g., specialized structural properties). SNAP generally lists substitutes at the sector and end use level, not the application level (e.g., the Agency has listed substitutes for rigid PU foam, which would allow for those substitutes in SCPPU foam, but it has not evaluated the use of these substitutes for SCPPU foam in particular), and TEAP's FTOC did not specifically discuss or evaluate SCPPU foam as an individual use in its 2022 assessment report. More information about the specialized nature of SCPPU foam can be found in the SCPPU foam chapter of the TSD.

Aside from the limitations noted above, EPA is not aware of significant Federal regulatory restrictions on the type of substitutes that could be considered for this application. EPA is also not aware of any required standards

that SCPPU foam needs to meet to be manufactured and sold in the United States. The SCPPU foam chapter of the TSD contains further information on sources consulted, and EPA invites comment on any additional information the Agency should consider in analyzing substitutes for this application.

After reviewing the available information, including reports on progress made by manufacturers of SCPPU foam for marine and trailer use, EPA has not identified a safe and technically achievable substitute that is available at the time of this proposal, but anticipates that substitutes will likely be available soon. We are monitoring this issue and are seeking information from the entities that use HFCs in this application on whether progress continues as anticipated to inform our final determination.

2. Supply

Entities manufacturing SCPPU for marine and trailer uses currently use an HFC-134a formulation. As described in more detail in Section V.C.2 of this preamble, HFC-134a is the most widely produced of all HFCs. There is substantial domestic and global production of HFC-134a. This application's demand for HFC-134a is very small compared to domestic consumption; allocated ASAs for this application in 2024 are equivalent to 0.1 percent of calculated domestic consumption of HFC-134a in 2022, on an MTEVe basis. However, as noted earlier, the global and domestic HFC markets are continuing to adapt to regulations promulgated pursuant to the AIM Act, including the implementation of the phasedown of production and consumption of HFCs, and other authorities. EPA anticipates this market will continue to change, and EPA will analyze additional information as it becomes available ahead of finalizing this rulemaking. Such additional information will include whether there were immediate market shifts as a result of both the stepdown of the level of permissible production and consumption of HFCs that took effect on January 1, 2024, and regulations effective January 1, 2025.

In addition to changes in the HFC market due to the overall phasedown of production and consumption, other AIM Act regulatory programs are expected to take effect both between proposal and finalization of this rulemaking and during the applicable period under review in this rulemaking, as described in more detail in Section V.C.2. These requirements may reduce demand for HFC-134a domestically for

certain other uses, though EPA expects continuing demand for HFC-134a in applications not subject to restrictions will continue. There may also be new or expanded use of blends with HFC-134a as a component designed to meet new restrictions. In addition, other EPA regulations may impact domestic supply of HFC-134a, but global supply should remain substantial in comparison to this application's demand for HFC-134a.

EPA is currently not aware of any applicable restrictions on where this application could purchase HFCs, including any purity requirements or regulatory restrictions on supply. As such, it is EPA's assessment that this application may be able to use recovered and reprocessed HFCs supplied by chemical manufacturers. This is relevant in assessing what supply of regulated substance may be available to an application, since in such a case EPA does not need to limit its analysis to only virgin chemicals. The likeliest source of reprocessed HFCs for this application would be reclaimed refrigerants, which are held to AHRI 700 standards (see footnote 17 in Section V.C.2). Since there are no Federal purity requirements for HFCs used in foams or any industry requirements, the purity of reclaimed HFCs is likely the same or higher than the virgin HFCs used in this application. While EPA is not aware of specific purity requirements for this application, EPA notes that efficacy of blowing agents can be influenced by their composition and purity. As described in more detail in Section V.C.2, the supply of reclaimed HFC-134a in the United States is significant, though there is uncertainty regarding the future demand for this material.

As part of this proposed analysis, EPA is also considering the supply of HFC-152a. As further explained in Section IV.C, as part of the framework for its analysis EPA is proposing to evaluate the supply of a substitute HFC if that HFC is a safe or technically achievable substitute for an application. As outlined in the prior section (Section V.D.1), EPA's analysis suggests that HFC-152a blended with cyclopentane appears to be a safe and technically achievable substitute for this application. EPA is therefore evaluating the supply of HFC-152a to determine whether it would be insufficient to accommodate this application. As described in more detail in Section V.C.2, other AIM Act regulations may increase demand for HFC-152a domestically for certain uses, though EPA notes that many sectors where HFC-152a is a technically achievable substitute have already transitioned to other alternatives. Domestic production

capacity is also expected to increase, but EPA cannot say with certainty when it will be available. Global supply should also remain substantial in comparison to this application's demand for HFC-152a.

3. What is EPA proposing regarding eligibility for application-specific allowances?

In light of the rapid evolution of information regarding both the availability of substitutes for this sector (including all companies in this application's stated plans to transition away from HFC-134a before 2026) and HFC supply, EPA is proposing a range of options based on the current Agency analysis and in anticipation of increased available information before this proposed rule is finalized. Specifically, EPA is proposing to finalize any of the following outcomes: (1) no renewal, such that the application will not receive ASAs, (2) renew eligibility for ASAs for two years, such that ASAs are available for calendar years 2026 and 2027, or (3) renew eligibility to continue receiving ASAs for the full five-year period with allowance amounts determined based on the EV of HFC-152a.²³

Before finalization of this rule, we anticipate new information to become available on the supply of HFCs and availability of substitutes for the application, as outlined in detail in this section. EPA will consider this new information, in addition to public comments, in making a final determination for this application.

As explained earlier in this section, the development of safe or technically achievable substitutes for this application is a rapidly evolving space, such that multiple possible outcomes can reasonably be expected to occur through 2030. All entities that have received ASAs for SCPPU foam for marine and trailer uses to date have told EPA that they plan to transition to substitutes before January 1, 2026. One potential outcome at rule finalization is that EPA depends on these statements to determine that a "safe or technically achievable substitute is available for the applicable period" for this application. Statements from all of the companies that use regulated substances to manufacture SCPPU foam that they will transition to substitutes before the next ASA period could serve as a reasonable basis to determine that safe and technically achievable substitutes are

available. There are also specific milestones that these entities have reached, such as one company receiving a final air permit for an expansion of the manufacturing facility that will use the HFC-152a/cyclopentane blend, indicating the company is able to move forward with full-scale testing and commercialization. If the entities' plans shared with EPA remain the same at the time when EPA is finalizing this proposed rule, particularly if they have already commercialized use of the substitutes, it is likely that EPA would determine that a safe or technically achievable substitute is available for this application. If EPA makes this determination, SCPPU foam for marine and trailer uses will not be eligible for ASAs as of January 1, 2026, even if EPA receives information to determine that supply of the currently used regulated substance is insufficient, unless the application has insufficient supply of a substitute HFC, as discussed in more detail below in this section. However, EPA recognizes there is uncertainty as to whether plans to commercialize will remain the same, be delayed, or be subject to unanticipated hurdles that could require additional evaluation of this alternative. EPA also has less information regarding the deployment of the HFO alternative outside of statements from the entity working toward its development and commercialization. Before finalization of this proposed rule, EPA intends to review and consider, as appropriate, all available information, specifically regarding expected timelines and testing data. EPA invites comment regarding the availability of safe or technically achievable substitutes for this application. The Agency will continue to collect information from regulated entities and other relevant sources through the public comment period and the current reporting requirements to inform a final determination of whether the criterion in subsection (e)(4)(B)(i)(I) is met.

EPA is also proposing to determine either: (1) the supply of HFC-134a is not insufficient to accommodate this application; or (2) the supply of HFC-134a is not insufficient to accommodate this application as of January 1, 2028. In other words, EPA proposes to determine that the criterion in subsection (e)(4)(B)(i)(I) is either: (1) not met at all for this application for HFC-134a, and therefore the application would not be eligible to receive ASAs with allowances calculated based on HFC-134a use starting January 1, 2026; or (2) not met as of January 1, 2028, and therefore the application would not be

²³ The proposed amendatory text included in this Federal Register document shows only one of the co-proposed options. This is for illustrative purposes and should not be read as EPA favoring one co-proposal over another.

eligible to receive ASAs with allowances calculated based on HFC-134a use starting January 1, 2028. Under the first option, this means that even if the application did not have a safe or technically achievable substitute available, ASAs would not be available for manufacturers of SCPPU foam for marine and trailer uses as of January 1, 2026. For the second option, SCPPU foam for marine and trailer uses would not be an eligible application for ASAs as of January 1, 2028, regardless of the availability of substitutes. However, if the available substitute is an HFC with insufficient supply, EPA may determine SCPPU foam for marine and trailer uses are eligible for renewal for that substitute HFC.

Given the current uncertainty over which EPA anticipates having more clarity ahead of finalization of this proposed rule, at this time EPA contends that it could determine that the criterion in subsection (e)(4)(B)(i)(I) is met now, met as of January 1, 2028, or is not met at all through the entire renewal period with respect to HFC-152a. Under the first possible determination (supply of HFC-152a is not insufficient now), even if the application did not have a safe or technically achievable non-HFC substitute available as of January 1, 2026, the application would not be eligible for renewal as of that date. Under the second possible determination (supply of HFC-152a is not insufficient as of January 1, 2028), the application would not be eligible for ASAs as of January 1, 2028, even if the application did not have a safe or technically achievable non-HFC substitute. Under the third possible determination (supply of HFC-152a is insufficient), the application would be eligible for ASAs if there was no safe or technically achievable non-HFC substitute for the entire application. EPA will monitor reported data over the next year on the noted areas of uncertainty and invites comment on this issue.

In light of the range of outcomes EPA has proposed regarding its determinations on whether the criteria in subsection (e)(4)(B)(i)(I) and (II) are met, EPA is proposing three potential outcomes on whether and how SCPPU foam for marine and trailer uses may be eligible for future ASAs: (1) not eligible to receive ASAs; (2) eligible to receive calendar year 2026 and 2027 ASAs; and (3) eligible to receive ASAs for the five-year period of calendar years 2026–2030 with allowance amounts determined based on the EV of HFC-152a. EPA is also taking comment on SCPPU foam for marine and trailer uses eligibility to

receive ASAs consistent with the current approach through calendar year 2030 ASAs. EPA also could finalize different outcomes based on how the transition to substitutes progresses between this proposal and rule finalization.

Under outcome (3), EPA is proposing to allocate allowances based on an expectation that the application can use HFC-152a. To achieve this, EPA is proposing to base the calculation of allowance allocations on the estimated total mass of HFCs needed by the application and allocate at the level necessary to purchase HFC-152a on an EV-weighted basis. For example, if a company used 1,000 kg of HFC-134a and 500 kg of HFC-152a in Year 3 (as defined by the regulatory formula; see Section VII for further discussion of regulatory formula and proposed revisions), and HFC-152a substituted for HFC-134a one-for-one on a gram basis for this application, EPA would multiply 1,500 kg by the applicable average annual growth rate (AAGR) and then by the EV of HFC-152a to calculate the company's allowance allocation for the following year. EPA would not limit which HFCs could be purchased for use in the application once the allowances are issued. EPA is taking comment on whether the Agency should apply any relevant mass conversions in this calculation (*i.e.*, if an application needed more or less HFC-152a on a gram-by-gram basis when substituting for HFC-134a) where the total mass of HFCs used would be multiplied by a mass ratio, as appropriate, then multiplied by the AAGR.

As outlined in detail elsewhere in this section, before EPA finalizes this proposed rule, the Agency intends to review available information and comments received on this proposal to get further clarity on progress toward commercialization of substitutes, how the overall HFC market has adjusted to the 2024 stepdown, what alternatives are adopted by subsectors subject to 2025 Technology Transitions Program restrictions, and how much additional domestic HFC-152a production capacity comes online.

4. Proposed Restriction Under EPA's Technology Transitions Program

The 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) restricts the manufacture and import of foam products that use as a blowing agent HFCs or HFC blends that have a GWP of 150 or greater (hereafter, “foam products”). This restriction begins January 1, 2025. Examples of items subject to this restriction include products that are foams, such as

extruded polystyrene boardstock; products for blowing foam, such as two-part foam systems for blowing PU foam; and products that are manufactured using foam, such as boats or refrigerated trailers.

The 2023 Technology Transitions Rule exempts applications which receive ASAs (40 CFR 84.56(a)(2)). However, as finalized in the October 24, 2023, rule, if an application no longer qualifies for ASAs, the Technology Transitions restrictions would apply.

As discussed in the preamble to the 2023 Technology Transitions Rule, the transition to non-HFC and lower-GWP substitutes is already well underway or completed for much of the foams sector (*see* 88 FR 73184). EPA therefore established a uniform GWP limit of 150 for the entire foams sector starting January 1, 2025. The sole exception to this restriction for the foams sector was SCPPU foam for marine and trailer uses, per their receipt of ASAs. As discussed above in Section V.D.1, EPA proposes that while there are no safe and technically achievable alternatives available at this time under subsection (e)(4)(B) specifically for use in SCPPU foams for marine and trailer uses, we anticipate, based on currently available information, that the development of substitutes for these uses is progressing rapidly, such that by the time EPA finalizes this action, substitutes meeting the (e)(4)(B)(i)(I) criterion may be available. While the list of considerations under subsection (i)(4)(B) that EPA is to factor in, to the extent practicable, when considering availability of substitutes for issuing restrictions under subsection (i) includes factors beyond those characteristics listed in subsection (e)(4)(B)(i)(I), in this instance EPA's view is that technological achievability of lower-GWP substitutes in marine and trailer uses is the primary barrier to transitioning away from the use of HFC-134a in these two uses. Many of the factors listed in subsection (i)(4)(B) are not relevant to EPA's assessment of availability of substitutes for these two uses, such as building codes, appliance efficiency standards, and contractor training costs. As noted in Section V.D.1 of this preamble, EPA's SNAP Program has already listed as acceptable the potential substitutes under consideration and the entities actively developing the substitutes and working to bring those substitutes to market are almost certainly considering costs to consumers and affordability for small business consumers as part of their efforts.

We propose that the applicability of the restriction on HFC foam blowing

agents in the 2023 Technology Transitions Rule to SCPPU foam for marine and trailer uses will depend entirely on which of the three co-proposals EPA ultimately finalizes. That is, under co-proposal (1), where EPA would not renew ASAs for SCPPU for marine and trailer uses as of the effective date of a final rule based on this proposal, requirements of the Technology Transitions Program, which include labeling, reporting, recordkeeping, and restrictions on HFCs, would apply beginning January 1, 2026. Under co-proposal (2), where EPA would renew ASAs for SCPPU for marine and trailer uses for 2026 and 2027, requirements of the Technology

Transitions Program would apply beginning January 1, 2028. For both co-proposals (1) and (2), EPA proposes that the recordkeeping requirements would apply to manufacturers of SCPPU foams for marine and trailer uses beginning January 1 of the year those uses no longer qualify for ASAs, and the first report would be due March 31 of the following year, as discussed above in Section V.C.4. For example, under co-proposal (1), manufacturers would need to keep records as required by the 2023 Technology Transitions Rule starting January 1, 2026, and submit their first Technology Transitions report to EPA by March 31, 2027; under co-proposal (2), manufacturers would need to keep

such records starting January 1, 2028, and would submit their first Technology Transitions report by March 31, 2029. Under co-proposal (3), where EPA would renew ASAs for SCPPU for marine and trailer uses based upon the use of HFC-152a instead of HFC-134a, SCPPU for marine and trailer uses would continue to be exempt from the 2023 Technology Transitions Rule. The requirements under each co-proposal for SCPPU for marine and trailer uses are summarized in Table 2 below. EPA is interested in data and information related to the availability of substitutes and the proposed timeline for transitioning in this application.

TABLE 2—APPLICABILITY OF TECHNOLOGY TRANSITIONS REQUIREMENTS UNDER CO-PROPOSALS FOR SCPPU FOR MARINE AND TRAILER USES

Co-proposal	Technology transitions GWP limit and compliance date	Date technology transitions labeling requirements begin	Date technology transitions reporting requirements begin
(1) No renewal of ASAs	GWP limit of 150 beginning January 1, 2026.	January 1, 2026	First report due March 31, 2027, including data from January 1, 2026, through December 31, 2026.
(2) Renew eligibility for ASAs for 2026 and 2027.	GWP limit of 150 beginning January 1, 2028.	First report due March 31, 2029, including data from January 1, 2028, through December 31, 2028.	
(3) Renew eligibility for 2026–2030 with allowance amounts determined based on the EV of HFC–152a.	Because application continues to be eligible for ASAs, it is exempt from Technology Transitions requirements.		

E. Etching of Semiconductor Material or Wafers and the Cleaning of Chemical Vapor Deposition Chambers Within the Semiconductor Manufacturing Sector

EPA has been allocating ASAs for regulated substances used for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector in accordance with subsection (e)(4)(B)(iv)(I)(dd) of the AIM Act. In the Allocation Framework Rule, EPA defined “etching” in the context of semiconductor manufacturing as “a process type that uses plasma-generated fluorine atoms and other reactive fluorine-containing fragments that chemically react with exposed thin films (e.g., dielectric, metals) or substrate (e.g., silicon) to selectively remove portions of material. This includes semiconductor production processes using fluorinated GHG reagents to clean wafers.” (40 CFR 84.3). EPA defined “chemical vapor deposition chamber cleaning” (hereafter referred to as “chamber cleaning”) in the context of semiconductor manufacturing as “a process type in which chambers used for depositing

thin films are cleaned periodically using plasma-generated fluorine atoms and other reactive fluorine-containing fragments” (40 CFR 84.3). At the time of this proposal, EPA is aware of three HFCs that are used for this application in manufacturing. HFC-23 is commonly used for selective dry etching of silicon dioxide (SiO₂) and silicon nitride (SiN), while HFC-32 and HFC-41 are used in high-aspect-ratio hole etching. HFC-23, HFC-32, and HFC-41 may also be minimally used in chamber cleaning processes.

EPA is proposing to determine that no safe or technically achievable substitute will be available for the semiconductor application and that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the semiconductor application through calendar year 2030. Therefore, EPA proposes to renew the eligibility of entities using regulated substances for the defined semiconductor application to receive ASAs for the five-year period of calendar years 2026 through 2030.

1. Availability of Safe and Technically Achievable Substitutes

EPA has not identified any substitutes that it would propose to deem safe and technically achievable that are available for the entirety of the defined semiconductor application.

In developing this assessment, EPA reviewed information from industry trade groups, the TEAP’s MCTOC, the Intergovernmental Panel on Climate Change (IPCC), scientific journal articles, and more. The sources examined by EPA are outlined in greater detail in the TSD included in the docket for this proposed action.

The MCTOC 2022 Assessment report reviewed HFC gases commonly used in semiconductor manufacturing, along with their alternatives, using the following criteria: commercially available, technically proven, environmentally sound, economically viable and cost effective, safe to use in industrial applications considering flammability and toxicity issues, and easy to use and maintain.²⁴ Based on this report and other sources, EPA is

²⁴ See <https://ozone.unep.org/system/files/documents/MCTOC-Assessment-Report-2022.pdf>.

aware that semiconductor manufacturers currently utilize other fluorinated gases, such as sulfur hexafluoride (SF₆), nitrogen trifluoride (NF₃), some saturated PFCs (*i.e.*, CF₄, C₂F₆, *c*-C₄F₈), and some unsaturated PFCs (*i.e.*, C₄F₆, C₅F₈) for the processes of etching and chamber cleaning. The MCTOC 2022 Assessment report lists these chemicals as both commercially available and technically proven and can be used as substitutes for etching and chamber cleaning. In developing its proposed determination regarding substitutes, however, EPA did not consider many of these chemicals in its proposed consideration of the availability of safe and technically achievable substitutes because of their higher GWPs, lower utilization rates (*i.e.*, higher emission rates), or higher toxicity than HFCs. Sulfur hexafluoride (SF₆), which is used in the etching of silicon, silicon dioxide (SiO₂), and silicon nitride (SiN), as well as chamber cleaning, has a 100-year GWP of 22,800. Nitrogen trifluoride (NF₃), which is used in the etching of silicon and silicon nitride (SiN), as well as for chamber cleaning, has a 100-year GWP of 17,200. Saturated PFCs, used in the etching of silicon, silicon dioxide (SiO₂), and other materials, have a 100-year GWP ranging between 7,390 to 12,200. Saturated PFCs are also difficult to abate and have relatively low utilization rates.

Unsaturated PFCs are used in high-aspect-hole-ratio etching. They have GWPs of less than two; however, these compounds have not been widely adopted at least in part since these chemicals can only be used in certain processes and are not necessarily viable for all types of etching, etching all materials, or chamber cleaning. For example, unsaturated PFCs are not known to be used in chamber cleaning, so the Agency does not consider unsaturated PFCs as available for the entire application.

The MCTOC 2022 Assessment report also lists other compounds that are currently being studied for use but are not yet technically proven, are not considered safe or easy to use, and may have additional toxicity concerns. These chemicals include carbonyl sulfide, HFO-1336mzz(E), PFC-1216, chlorine trifluoride (ClF₃), hexafluoroisobutylene (HFIB), and trifluoriodomethane (CF₃I). Carbonyl sulfide, used in certain etching applications, is also highly flammable and toxic. HFO-133mzz(E) is being considered as a replacement for certain etching chemicals. PFC-1216 is being studied for use in etching silicon dioxide (SiO₂). Chlorine trifluoride (ClF₃) may be used for chamber cleaning for Low Pressure CVD chambers but is

extremely flammable and is not considered safe or easy to use. Although not known to currently be used, hexafluoroisobutylene (HFIB) could be used in certain etching applications for silicon containing material. Trifluoriodomethane (CF₃I) is used for etching of silicon dioxide (SiO₂) and silicon nitride (SiN), but the MCTOC 2022 Assessment report does not list it as safe or easy to use.

EPA is aware of certain HFCs that may be in the early stages of research for high-aspect-ratio hole etching, such as HFC-134a and HFC-125. ASA holders have stated that research on lower-GWP alternatives is ongoing and there are currently no known alternatives to HFCs, PFCs, and nitrogen trifluoride (NF₃), and any alternatives would not be commercially available until at least 2030.

In light of the above analysis, EPA has not identified a safe and technically achievable substitute that is available at the time of this proposal. When a substitute or substitutes are identified for the entirety of the application, it would still take significant time to replace the current HFC(s) with the substitute(s). One industry trade group has stated that semiconductor technologies require at least 10 years from fundamental research to high volume manufacturing to innovate and implement new technologies and their associated raw materials. Given that no promising substitutes have been identified, there is no information before the Agency at the time of this proposal to suggest that there would be a safe and technically achievable substitute available prior to the next five-year review.

2. Supply

HFC-23, HFC-32, and HFC-41 are all currently used in the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector. As described earlier in Section IV.B of the preamble, EPA is proposing to determine that an application meets this criterion if EPA determines that any of the HFCs currently used in an application's equipment or to manufacture the application's products for use have insufficient supply.

As described above in Section E of this preamble, HFC-23 is used in the etching of silicon dioxide (SiO₂) and silicon nitride (SiN) and is also used minimally in chamber cleaning. In 2022, domestic producers produced approximately 1,049.3 MT of HFC-23. 876.2 MT were subsequently destroyed, and one producer sold 5.2 MT of this HFC-23 for consumptive uses, which

could be used for semiconductors as well as other uses. In addition, there were about a half dozen entities that imported HFC-23 with total amount of imports equaling 125.6 MT. Overall, HFC-23 made up only 0.07 percent of total U.S. HFC consumption in 2022 on a mass basis. Moreover, as HFC-23 has the highest EV, it may be possible that this supply is further constricted in the future as the phasedown progresses and the number of available allowances is reduced. As stated elsewhere in this proposed rule, EPA recognizes that there is inherent uncertainty regarding HFC production, and in particular for HFCs with a more limited number of production facilities and/or higher GWPs than other regulated HFCs, this uncertainty may be greater. Therefore, EPA understands there will be changes to the market conditions resulting from the domestic and global phasedown of HFC production and consumption.

In addition, the use of HFC-23 in the semiconductor manufacturing application is large compared to the annual consumption of HFC-23. In 2022, semiconductor ASA holder purchases²⁵ of HFC-23 accounted for about 81 percent of calculated consumption of HFC-23. Furthermore, at the end of 2022, suppliers held 304.0 MT of HFC-23 in domestic inventory, which is equivalent to about 293 percent of calculated consumption of HFC-23 in 2022; not all of this HFC-23 may be considered available supply, as the entities both holding this material in inventory and reclaiming these HFCs are broader than EPA's interpretation of chemical manufacturers (see Section IV.B for more information).

EPA also analyzed the supply of HFC-32. In 2022, the one domestic producer of HFC-32 produced 17,744.3 MT of HFC-32. There were also over a dozen entities that imported HFC-32, with total import quantities equaling 9,885.3 MT. Overall, HFC-32 made up approximately 17 percent of total U.S. HFC consumption in 2022 on a mass basis. The use of HFC-32 in the semiconductor manufacturing application is small compared to the annual consumption of HFC-32. In 2022, semiconductor ASA holder purchases of HFC-32 accounted for less than 0.035 percent of calculated consumption of HFC-32. At the end of 2022, suppliers held 21,435 MT of HFC-32 in domestic inventory, which is equivalent to about 80 percent of calculated consumption of HFC-32 in 2022; similar to considerations for

²⁵ For this calculation, EPA is using purchases in 2022 instead of allowances allocated so that percent of consumption can be calculated for each HFC.

supply of HFC-23 and for other applications, not all of this inventory may be considered available.

Another factor EPA is considering is the impact that other regulatory actions may have for the available supply of HFC-32. As described in more detail above in Section V.A, the overall market for HFCs is likely to continue changing in light of AIM Act and potentially other restrictions. There is particular uncertainty regarding demand for HFC-32. The 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) set a GWP threshold of 700 for certain sectors and subsectors where previously higher-GWP HFCs or HFC blends have been used. HFC-32 has a GWP of 675 and may be a suitable alternative in those sectors and subsectors. In other cases, the 2023 Technology Transitions Rule set a GWP threshold of 150 and thus HFC-32 could not be used unless as a component of blends. The first set of restrictions under the 2023 Technology Transitions Rule have compliance dates of January 1, 2025, with the latest compliance dates taking effect on January 1, 2028. Additionally, the proposed Emissions Reduction and Reclamation Rule (88 FR 72216, October 19, 2023) proposes requirements for the use of recycled or reclaimed HFCs for certain uses, as discussed elsewhere in this preamble. When finalized, that rule may affect the use of reclaimed HFC-32.

EPA also analyzed the supply of HFC-41. There is one domestic supplier of HFC-41 that produced 22.2 MT of HFC-41 in 2022. In addition, there were multiple entities that imported HFC-41, with total import quantities equaling 38.3 MT. Overall, HFC-41 made up only 0.03 percent of total U.S. HFC consumption in 2022 on a mass basis. The use of HFC-41 in the semiconductor manufacturing application is moderately large compared to the annual consumption of HFC-41. In 2022, semiconductor ASA holder purchases of HFC-41 accounted for 21.5 percent of calculated consumption of HFC-41. At the end of 2022, suppliers held 26.7 MT of HFC-41 in domestic inventory, which is equivalent to about 60 percent of calculated consumption of HFC-41 in 2022; as noted for the supply of HFC-23 and HFC-32 and for other applications, not all of this inventory may be considered available.

One factor that plays into the sufficiency of supply of these HFCs is the purity specifications used by individual companies in the semiconductor manufacturing sector. While there is no Federal standard or regulation governing the purity of HFCs used in semiconductor manufacturing,

EPA is aware that individual companies in this sector set their own requirements. HFCs purchased for use in semiconductor manufacturing is produced at around 95–97 percent purity and then typically is purified to 99.999–99.9999 percent purity before it is used by semiconductor manufacturers. Supplying refined HFCs to end users can take up to one year, as purifiers require long lead times.

These purity requirements are also relevant when considering if reclaimed HFCs can be used in this application. EPA notes that virgin HFCs produced for semiconductor use are typically only at 95–97 percent purity, so EPA is not aware of why reclaimed HFCs cannot also be purified to industry specifications; EPA invites comments on this. Of the three HFCs utilized by the semiconductor industry, only HFC-23 and HFC-32 were reclaimed in 2022 and thereby could be a source of supply for this application, though the amount of reclaimed material is small. In addition, it is possible to capture the unreacted process gases used in semiconductor manufacturing, but the reclamation of fluorinated gases from the semiconductor manufacturing process is not currently economically viable.

There are other factors that may further impact the supply of HFCs for this application. The Creating Helpful Incentives to Produce Semiconductors Act of 2022 (CHIPS Act) has allocated over 50 billion dollars to semiconductor research, development, manufacturing, and workforce development in the United States, which has led to additional investment by semiconductor manufacturers. The U.S. market share of memory chip production is projected to grow from less than 2 percent to up to 10 percent over the next decade.^{26 27}

3. What is EPA proposing regarding eligibility for application-specific allowances?

EPA is proposing to renew the eligibility of entities using regulated substances for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector to receive ASAs for the five-year period of calendar years 2026 through 2030. EPA is proposing to determine “that the requirements described in subclauses (I)

and (II) of clause (i) are met” in accordance with the requirements of 42 U.S.C. 7675(e)(4)(B)(v)(II). Specifically, for the reasons outlined earlier in this section, EPA is proposing to determine that no safe or technically achievable substitute will be available for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector for the entire five-year period. EPA is also proposing to determine that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate this application through calendar year 2030. As explained earlier, EPA is proposing to determine the supply criterion is met if supply of one HFC used by the application is insufficient to accommodate the application. EPA proposes to determine that the supply of HFC-23 and HFC-41 are insufficient to accommodate the application for the reasons outlined in the prior section.

F. Mission-Critical Military End Uses

EPA has been allocating ASAs for regulated substances used for MCMEU in accordance with subsection (e)(4)(B)(iv)(I)(ee) of the AIM Act. In the Allocation Framework Rule, EPA defined “mission-critical military end uses” as “those uses of regulated substances by an agency of the Federal Government responsible for national defense which have a direct impact on mission capability, as determined by the U.S. Department of Defense (DOD), including, but not limited to uses necessary for development, testing, production, training, operation, and maintenance of Armed Forces vessels, aircraft, space systems, ground vehicles, amphibious vehicles, deployable/expeditionary support equipment, munitions, and command and control systems” (40 CFR 84.3). In the Allocation Framework Rule, EPA finalized an approach that treats the allocation of MCMEU allowances differently than the other applications given the “complex nature of the way DOD sources and uses HFCs for mission-critical applications,” (e.g., significantly larger networks of sites and users, including contractors, of HFCs than others covered by ASAs) (86 FR 55116, 55153, October 5, 2021). EPA set up a system whereby DOD must provide the amount of HFCs needed for mission-critical military use and that the two agencies would “work together to ensure the amount necessary is available for mission-critical military applications” (86 FR 55116, 55153, October 5, 2021).

²⁶ See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/21/fact-sheet-biden-harris-administration-bringing-semiconductor-manufacturing-back-to-america-2/>.

²⁷ See <https://www.mckinsey.com/industries/industrial-and-electronics/our-insights/semiconductor-fabs-construction-challenges-in-the-united-states>.

As the definition states, DOD has discretion to identify which uses of HFCs have a direct impact on mission capability. DOD is required to report to EPA “the broad sectors of use covered by current mission-critical military end uses in the next calendar year,” per 40 CFR 84.31(h)(3)(iv). Given the complex nature of the way DOD sources and uses HFCs for mission-critical applications, EPA has always maintained that DOD should have discretion to request the amount of allowances necessary to meet its mission-critical end uses and the Agency is not altering that approach through this rulemaking.

Recognizing the sensitive nature of the application, as well as the expert judgement that DOD has in identifying which uses of HFCs have a direct impact on mission capability, EPA consulted with DOD throughout development of this proposed rule, including in advance of interagency review, and received input to support EPA’s evaluation of the statutory criteria described in Section IV of this preamble.

After analyzing information relevant to the statutory criteria, as outlined in this section, and based on input from DOD, EPA is proposing to determine that no safe or technically achievable substitute will be available for the MCMEU application and that the supply of the regulated substances that the application is capable of securing from chemical manufacturers is insufficient to accommodate the MCMEU application through calendar year 2030. Therefore, EPA proposes to renew the eligibility of the MCMEU application to receive ASAs for the five-year period of calendar years 2026 through 2030.

1. Availability of Safe and Technically Achievable Substitutes

As discussed earlier in the preamble, in situations where there are not safe and technically achievable substitutes available for the entirety of the application, EPA would consider the statutory criterion regarding substitutes as being met. In public technical reports DOD (included in the rulemaking docket), DOD identified mission-critical end uses that do not have safe and technically achievable substitutes available. For example, DOD uses a mixture of HFC–227ea and sodium bicarbonate dry chemical in automatic fire extinguishing systems that protect the crew compartments of ground vehicles. DOD has tested potential replacements but has not identified a viable alternative to date. There are distinct technical specifications for some mission-critical end uses that are distinct from civil standards for the

same category of use (e.g., refrigerants and fire suppression agents). For example, automatic fire suppression systems in ground vehicles must meet unique military requirements for inhalation toxicity that allow personnel to stay within the protected space for at least five minutes after fire suppression.

Furthermore, because Congress defined this application as what is “mission-critical,” EPA has always acknowledged that this application is more fluid in terms of what particular HFC uses fall within the application. DOD may change which end uses it determines to be mission-critical over time. This further feeds into EPA’s proposed assessment that the Agency cannot determine at this time that there will be safe and technically achievable substitutes available for the entirety of the application.

2. Supply

In 2021, DOD sent a letter to EPA with information regarding mission-critical end uses at the time, including a list of six HFCs used in the application (HFC–125, –134a, –143a, –227ea, –236fa, and –32). EPA has determined through communications with DOD that at least some of these HFCs continue to be utilized in mission-critical end uses. As described in section IV.B of the preamble, EPA is proposing to determine that an application meets this criterion if EPA determines that any of the HFCs currently used to manufacture products or systems for use in the application have insufficient supply.

In the analysis of other applications in this proposal, EPA has evaluated the supply of five out of six HFCs that DOD identified as using in 2021 (i.e., all but HFC–143a). EPA is proposing to determine that supply of some of these HFCs is insufficient to accommodate the application. For example, in the evaluation of supply for the onboard aerospace fire suppression application, EPA is proposing to determine that the supply of HFC–227ea and HFC–236fa is insufficient to accommodate the application. This is in addition to the unique restrictions that apply to the Defense Logistics Agency and DOD purchasing requirements that impact the available supply of HFCs to DOD for MCMEUs. For example, there are Buy America requirements in Federal Acquisition Regulation (FAR) 25.1 and Defense Federal Acquisition Regulation Supplement (DFARS) 225.1 which may restrict how DOD can procure goods, which may include HFCs. Furthermore, as noted in the substitutes discussion for the MCMEU application, EPA has always acknowledged that this application is more fluid in terms of

what HFC uses fall within the application. DOD may change which end uses it determines to be mission-critical over time. The fact that DOD may determine that different HFCs and different annual quantities of those HFCs are necessary for mission-critical end uses further feeds into EPA’s proposed assessment that the supply of HFCs will be insufficient to accommodate the application.

3. What is EPA proposing regarding eligibility for application-specific allowances?

EPA proposes to renew eligibility for DOD to receive MCMEU ASAs for the five-year period of calendar years 2026 through 2030. EPA is proposing to determine “that the requirements described in subclauses (I) and (II) of clause (i) are met” in accordance with the requirements of 42 U.S.C. 7675(e)(4)(B)(v)(II). Specifically, for the reasons outlined earlier in this section, EPA is proposing to determine that no safe or technically achievable substitute will be available for the entirety of the application and that the supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the application through calendar year 2030.

G. Onboard Aerospace Fire Suppression

EPA has been allocating ASAs for regulated substances used for onboard aerospace fire suppression in accordance with subsection (e)(4)(B)(iv)(I)(ff) of the AIM Act. In the Allocation Framework Rule, EPA defined “onboard aerospace fire suppression” as the “use of a regulated substance in fire suppression equipment used on board commercial and general aviation aircraft, including commercial-derivative aircraft for military use; rotorcraft; and space vehicles. Onboard commercial aviation fire suppression systems are installed throughout mainline and regional passenger and freighter aircraft, including engine nacelles, auxiliary power units (APUs), lavatory trash receptacles, baggage/crew compartments, and handheld extinguishers” (40 CFR 84.3). At the time of this proposal, EPA is aware of only one area, lavatory trash receptacles, in which HFCs (specifically HFC–227ea and HFC–236fa) are used in commercial aviation. For military uses, HFC–125 has been used in engine nacelles and APUs, and HFC–236fa has been used in a streaming application (i.e., a portable

extinguisher).²⁸ In addition to HFC uses in commercial and military aviation, EPA is aware that HFCs have limited usage in general aviation, which consists of private and/or business aircraft. The Agency seeks additional information on how HFCs are used for general aviation and how widespread the use is.

After analyzing information relevant to the statutory criteria, as outlined in this section and the TSD, EPA is proposing to determine that no safe or technically achievable substitute will be available for the entirety of onboard aerospace fire suppression and that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the onboard aerospace fire suppression application through calendar year 2030. Therefore, EPA proposes to renew the eligibility of entities using regulated substances for onboard aerospace fire suppression to receive ASAs for the five-year period of calendar years 2026 through 2030.

1. Availability of Safe and Technically Achievable Substitutes

Identification of available safe and technically achievable substitutes in this application requires considering a range of factors, including fire suppression effectiveness, toxicity, and space and weight considerations. EPA has not identified available substitutes that it would propose to deem safe and technically achievable for the entirety of the onboard aerospace fire suppression application. As discussed earlier in the preamble, in situations where there are not safe and technically achievable substitutes available for the entirety of the application, EPA would not consider this statutory criterion met.

HFCs are used in onboard aerospace fire suppression in fixed systems for total flooding applications and in portable equipment for streaming uses (e.g., handheld fire extinguishers). Fire suppression agents must satisfy environmental and safety criteria, including but not limited to acceptable ODPs and GWPs, be effective extinguishants, and, for spaces where people would be present, have sufficiently low toxicity such that under normal use the discharge of agent in occupied spaces would not harm people. Other important features that are sometimes relevant for onboard aerospace fire suppression include

being electrically non-conductive, and “clean” in certain applications such as for high-value electronics, controls, or other critical systems in the protected spaces where it is important to leave no non-volatile residue that could damage the equipment.

As noted at the start of this section, HFCs are used in limited areas within the application. Because there are potentially overlapping ASAs available for a military use of HFCs, EPA has focused its analysis of substitute availability primarily on commercial aviation. EPA is aware of only one application where HFCs are used in commercial aviation: lavatory trash receptacle fire extinguishing systems. Lavatory trash receptacle systems are total flooding systems; total flooding systems are designed to automatically discharge a fire extinguishing agent throughout a confined space. EPA has not identified any safe and technically achievable substitutes for lavatory trash receptacle systems. In coming to this proposed determination, EPA reviewed information from multiple sources including FAA, the EPA SNAP Program, FSTOC, and the International Civil Aviation Organization (ICAO) which is outlined in greater detail in the TSD included in the docket for this proposed action. The FSTOC 2022 Assessment Report noted that it is not aware of any research to develop an HFC substitute in lavatory trash receptacle fire extinguishing systems. Furthermore, FSTOC noted that identifying substitutes for lavatory trash receptacles is a low priority for industry given that it makes up less than one percent of the installed fire suppression base on board aircraft.

In developing its proposed determination, given the global effort to find viable halon alternatives, EPA did not consider halons in its proposed consideration of the availability of safe and technically achievable substitutes. However, both Halon 1301 and Halon 1211 are technically achievable and continue to be used in onboard aerospace fire suppression. Although the onboard aerospace fire suppression industry has relied on halons for fire suppression for decades, the United States phased out the production and import of virgin halons in 1994 due to their high ODP. Recycled halons have been the only supply of halons in the United States for nearly 30 years and still comprise the majority of installed fire suppression capacity on most aircraft. Industry has made extensive efforts to identify alternatives to halons particularly with recent estimates from the TEAP's FSTOC that the dwindling

supply of recycled halons could lead to shortages in the next decade.

In assessing whether there was a safe and technically achievable substitute available, EPA also considered what alternatives are listed for use under SNAP for fire suppression that would be relevant for these applications. EPA notes that 2-bromo-3,3,3-trifluoropropene (2-BTP) is listed as an acceptable substitute subject to use conditions for use as a streaming agent in handheld extinguishers and for certain total flooding applications (e.g., engine nacelles and APUs). FAA has approved the use of 2-BTP in handheld extinguishers, and commercial aircraft manufacturers have begun replacing Halon 1211 with 2-BTP extinguishers on newly designed aircraft. As noted above, the SNAP Program listed 2-BTP as acceptable as a total flooding agent in engine nacelles and APUs; however, 2-BTP has not been listed as acceptable in lavatory trash receptacles and the factors for consideration are different from other acceptable SNAP-listed uses. For examples, use in lavatory trash receptacles would be in a space occupied by people, whereas use in engine nacelles and APUs are in unoccupied spaces. Furthermore, FAA has not approved 2-BTP for any total flooding systems to date.

As noted in the introduction to this section, in addition to the use of HFCs for lavatory trash receptacles in commercial aviation, HFC-125 has been used in engine nacelles and APUs on commercial-derivative aircraft for military use. Industry has explored several other fire suppression agents in engine nacelles and APUs, but none have proven to be a viable solution. For example, the industry previously explored FK-5-1-12 for use as a fire suppression agent in engine nacelles, but it failed an FAA-required live fire test. As a result, for the purposes of its evaluation under the AIM Act subsection (e), EPA has not identified safe and technically achievable substitutes that are available for use in engine nacelles or APUs.

In addition to the areas in which HFCs are used in total flooding systems, HFC-236fa is used as a streaming agent in commercial-derivative aircraft for military use. As previously noted in this section, 2-BTP has been listed as acceptable by SNAP, is FAA-approved, and commercial aircraft manufacturers have begun transitioning to 2-BTP extinguishers on newly produced aircraft. While EPA analysis suggests that 2-BTP is available as a safe and technically achievable substitute, as explained elsewhere in this proposal, EPA would only determine the statutory

²⁸ See https://www.epw.senate.gov/public/_cache/files/d/1/d152a591-878f-4a4d-b9c1-dc7121c06eca/9D366FF1E61F7EFFD6A71C37C92924A5.04.03.2020-boeing.pdf.

criterion in subsection (e)(4)(B)(i)(I) is not met if the Agency determines substitutes are available for the entirety of the application.

If a substitute were identified for the entirety of the application, it would still take significant time for transition to the substitute to occur for this application. FAA has testing requirements and minimum performance standards that a new fire suppression agent must meet before it can be used commercially. While there is no prescribed amount of time it takes to meet these requirements, a stakeholder indicated to EPA in a November 2023 public stakeholder meeting that the certification process can take three to five years. Another stakeholder described the FAA process as arduous and noted that it could take many years to receive certification for a new fire suppression agent. There is no information before the Agency at the time of this proposal to suggest that there would be a safe and technically achievable substitute available prior to the next five-year review.

2. Supply

As previously discussed, HFC-227ea, HFC-236fa, and HFC-125 are all currently used in onboard aerospace fire suppression. As described in Section IV.B of the preamble, EPA is proposing to determine that the requirements of 42 U.S.C. 7675(e)(4)(B)(i)(II) are met for this application if EPA determines that any of the HFCs currently used in a commercial product or to manufacture products for use in the application have insufficient supply.

HFC-227ea is the only regulated substance for which onboard aerospace fire suppression allowances have been expended to date. As previously stated, HFC-227ea is used in commercial aviation whereas HFC-236fa and HFC-125 are used in commercial-derivative aircraft for military use. As intended in the Allocation Framework Rule, there is overlap between the onboard aerospace fire suppression application and the MCMEU application. EPA is not reopening this approach through this rulemaking, so as long as DOD continues to classify the operation of Armed Forces aircraft as mission-critical, then DOD may use MCMEU allowances for fire suppression equipment installed on commercial-derivative aircraft. Therefore, in addition to HFC-227ea being the only regulated substance for which onboard aerospace fire suppression allowances have been expended, the uses of HFC-227ea are the only uses for which the onboard aerospace fire suppression application is the sole pathway to receive allowances. In 2022, the sole

domestic producer of HFC-227ea produced 1,324.7 MT of HFC-227ea, comprising one percent of U.S. HFC production on a mass basis. In addition, there were nine entities that imported HFC-227ea with the total amount of imports equaling 454.2 MT. Overall, HFC-227ea made up only 0.2 percent of all U.S. HFC consumption in 2022 on a mass basis. At the end of 2022, suppliers held 1,008.3 MT of HFC-227ea in domestic inventory, which is equivalent to about 323 percent of calculated consumption of HFC-227ea in 2022; as noted in the supply discussions for the other applications above (Sections B–E), not all of this HFC-227ea may be considered available supply, as the entities holding this material are broader than EPA's interpretation of chemical manufacturers. As stated elsewhere in this proposed rule, EPA recognizes that there is inherent uncertainty regarding HFC production, and in particular for HFCs with a more limited number of production facilities and/or higher GWPs than other regulated HFCs, this uncertainty may be greater; HFC-227ea has one of the highest GWPs of the regulated HFCs. Additionally, EPA understands there will be changes to market conditions resulting from the domestic and global phasedown of HFC production and consumption that could affect future supply of HFC-227ea. Given the relative size of the market for HFC-227ea and the limited number of producers in the United States and abroad, the supply chain for HFC-227ea is potentially more fragile than other supply chains (e.g., HFC-134a). This makes it more likely that the supply of HFC-227ea available from chemical manufacturers will be insufficient during 2026–2030 for this application.

The use of HFC-227ea in onboard aerospace fire suppression is small compared to the annual consumption of HFC-227ea. Allocated ASAs for this application in 2024 are equivalent to 0.8 percent of calculated consumption of HFC-227ea in 2022. While this small usage could make it easier for suppliers to divert a fraction of their available supply to this application, the supply chain for HFC-227ea remains fragile for reasons mentioned earlier in this section, including low production and a limited number of suppliers.

Another factor EPA is considering is the impact that other regulatory actions may have for the available supply of HFC-227ea. Specifically, the proposed Emissions Reduction and Reclamation Rule proposes requirements for the use of recycled HFCs for the initial charge (i.e., installation) and/or servicing in fire suppression systems generally, but not

onboard aerospace fire suppression systems as long as the application continues to be eligible for ASAs. If this requirement is finalized as proposed, this could decrease the demand for virgin HFC-227ea.

EPA also analyzed the supply of the other HFCs currently used in this application to determine whether supply of those HFCs was also insufficient to accommodate the application. HFC-236fa is used in portable extinguishers in commercial-derivative aircraft. There is currently one producer in the United States of HFC-236fa, however, there was no domestic production reported in 2022. Globally, HFC-236fa is produced in even smaller quantities than HFC-227ea. In 2022, there were seven entities that imported HFC-236fa with the total amount of imports equaling 301.4 MT. Overall, HFC-236fa made up less than 0.2 percent of all U.S. HFC consumption in 2022 on a mass basis. At the end of 2022, suppliers held 127.5 MT of HFC-236fa in domestic inventory, which is equivalent to about 47 percent of calculated consumption of HFC-236fa in 2022; as noted for HFC-227ea and other HFCs discussed in this preamble, not all of this inventory may be considered available supply (see Section IV.B for more information). While onboard aerospace fire suppression allowance holders have not used allowances for HFC-236fa to date, allocated ASAs for this application in 2024 are equivalent to 0.3 percent of calculated consumption of HFC-236fa in 2022. However, similar to the analysis for HFC-227ea, given the relative size of the market for HFC-236fa and the limited number of producers in the United States and abroad, the supply chain for HFC-236fa is potentially more fragile than other supply chains (e.g., HFC-134a). This makes it more likely that the supply of HFC-236fa available from chemical manufacturers will be insufficient during 2026–2030 for this application. Also, if finalized as proposed, the Emissions Reduction and Reclamation Rule (88 FR 72216, October 19, 2023) could result in similar changes for HFC-236fa as previously discussed with HFC-227ea.

HFC-125 is used in engine nacelles and APUs in military use. HFC-125 is one of the most widely produced HFCs in the world with multiple producers in the United States and globally. In 2022, U.S. production of HFC-125 totaled 19,175.7 MT, comprising 14 percent of U.S. HFC production on a mass basis. In addition, there were 19 entities that imported HFC-125 with the total amount of imports equaling 23,849 MT.

Overall, HFC–125 made up approximately 25 percent of total U.S. HFC consumption in 2022 on a mass basis. At the end of 2022, suppliers held 56,208.2 MT of HFC–125 in domestic inventory, which is equivalent to about 141 percent of calculated consumption of HFC–125 in 2022; for reasons explained elsewhere in this preamble, not all of this inventory may be considered available supply. Allocated ASAs for this application in 2024 are equivalent to 0.0059 percent of calculated consumption of HFC–125 in 2022. The 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) is restricting the use of HFCs and HFC blends above certain GWP limits in a number of sectors and subsectors as early as 2025. In all likelihood, demand for certain blends containing HFC–125 will decrease. However, given HFC–125 could be used in lower-GWP blends, including blends with GWPs that are less than the relevant GWP limits, there is uncertainty regarding how HFC–125 demand will be impacted. A reduction in demand for HFC–125 in the refrigeration and air conditioning sectors could result in an increase in available supply for use in fire suppression equipment.

3. What is EPA proposing regarding eligibility for application-specific allowances?

EPA is proposing to renew the eligibility of entities using regulated substances for onboard aerospace fire suppression to receive ASAs for the five-year period of calendar years 2026 through 2030. EPA is proposing to determine “that the requirements described in subclauses (I) and (II) of clause (i) are met” in accordance with the requirements of 42 U.S.C. 7675(e)(4)(B)(v)(II). Specifically, for the reasons outlined earlier in this section, EPA is proposing to determine that no safe or technically achievable substitute will be available for onboard aerospace fire suppression and that the supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate onboard aerospace fire suppression through calendar year 2030. As explained earlier, EPA is proposing to determine the supply criterion is met if supply of one HFC used by the application is insufficient to accommodate the application. EPA proposes to determine that the supply of HFC–227ea and the supply of HFC–236fa are insufficient to accommodate the application for the reasons outlined in the prior section.

VI. What are the proposed requirements associated with a petition to be listed as an application that will receive application-specific allowances?

The Agency is proposing a procedural framework for a petition filed pursuant to 42 U.S.C. 7675(e)(4)(B)(ii) requesting the designation of an application as eligible for ASAs. Subsection (e)(4)(B)(ii) outlines requirements that apply if the Administrator receives a petition requesting consideration of eligibility for ASAs. In the event a complete petition is received, the Agency would make a determination on whether to designate the application as eligible for ASAs after considering the criteria listed in 42 U.S.C. 7675(e)(4)(B)(i). The AIM Act specifies a timeline by which the Agency must consider these petitions. Within 180 days, the Agency must make the complete petition available to the public and propose and seek comment on whether to designate the application as eligible for ASAs and if so, the requisite number of allowances. Within 270 days of receiving the petition, the Agency must take final action on the petition.

In order to have sufficient information to evaluate a petition based on the criteria in subsection (e)(4)(B)(i), EPA is proposing to require that certain information must be included in order for a petition to be considered complete. The Agency envisions that petitions could be submitted by a single entity, such as a company or trade association, or a group of entities. The information listed as required is not meant to be a comprehensive list of what a petition may include, but rather a minimum threshold after which the Agency would consider a petition complete. EPA would only consider the statutory timeline triggered upon the filing of a complete petition. If the Agency were to receive a petition that did not include all required elements listed in this section, EPA proposes that it would consider that petition incomplete. In the event that an entity filed an incomplete petition, EPA would notify that entity that their petition was incomplete, but not process the petition any further. After a petition is submitted, if the petitioner supplements the petition, EPA would consider the petition to be re-submitted, and the statutory timelines for action would restart. New information may fundamentally alter the merits of a petition and therefore EPA would have to restart its review in order to account for new information holistically. Comments on EPA’s proposed determination would not restart the statutory timelines unless the

petitioner formally requested to supplement or revise their petition.

EPA proposes that a complete petition must include, at a minimum:

- A description of the application, including an explanation of what the application is, what purpose or function it achieves, and what populations or commercial products benefit from the application;
- A list of regulated substances and description of their use in the application and an explanation as to why HFCs are required in the application;
- Evidence that no safe or technically achievable substitute, including not-in-kind technologies, is or is expected to be available, and that the petitioner has conducted research to evaluate substitutes for the HFC(s). Examples of evidence that may be accepted include, but are not limited to, third-party analyses and technical reports by recognized experts in the field, test results evaluating potential substitutes on safety and technical achievability, decisions by EPA to list alternatives under the SNAP Program, or Federal regulatory standards that inhibit the ability of the application to transition to a substitute;
- Evidence that supply of the regulated substance(s) used in the application is insufficient to accommodate the application. Examples of evidence that may be accepted include, but are not limited to, signed and notarized communication from responsible corporate officers at multiple representative suppliers and potential suppliers for the sector or related sectors that the application falls in stating that the currently used HFCs cannot be sourced; signed and notarized communication from responsible corporate officers at 10 or more allowance holders, including at least three of the 10 largest consumption allowances holders, stating that the currently used HFCs cannot be sourced;
- A signed certification from a responsible corporate officer at the requesting entity that the application cannot use recovered and reprocessed HFCs in conjunction with or in place of virgin HFCs, either due to demonstrated lack of technical achievability or insufficient supply, and an explanation and evidence documenting why recovered and reprocessed HFCs cannot be used for the application;
- Total quantity (in kg) of all regulated substances acquired for the application specified in the petition in each of the previous three years, including a copy of the sales records, invoices, or other records documenting that quantity; if multiple entities are

submitting a joint petition, they must each provide EPA with unaggregated entity-specific information, which may be transmitted jointly or individually;

- The name of the entity or entities supplying regulated substances for and contact information for those suppliers over the past three years; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Total quantities (in kg) of regulated substances held in inventory as of the date the petition is submitted; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- An estimate of the total quantity of HFCs the petitioner expects to purchase in the first year it would be eligible for ASAs;

- Data on the proportion of the overall cost of the product or system that reflects the cost of regulated substances; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Historic and projected sales of the product or system; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Evidence of research into design changes to decrease the amount of HFCs used in the product or system;

- An explanation regarding whether the use of the regulated substance is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural, intellectual, and economic aspects);

- An explanation regarding steps taken to minimize the use of the regulated substance and any associated emission of the HFC(s); and

- Information on regulatory restrictions related to possible alternatives and substitutes.

Requiring minimum information be included in order for the Agency to deem a petition complete and process that petition would help provide clarity for the Agency and ensure timeliness and transparency for the petitioner. If EPA does not take this approach, it could prevent EPA from having sufficient data to determine whether the application warrants receiving ASAs and would unnecessarily delay a response from the Agency. This would mean that a petitioner would have to wait longer to re-submit a petition if a necessary element were omitted from the original submission. EPA seeks comment on the proposed petition process, including all of these proposed elements and the associated burden

with providing such information to the Agency.

In addition to proposing to establish required elements of a complete petition, EPA is providing a non-exhaustive list of other elements that are optional, but the Agency may find compelling or helpful in making a determination on a petition:

- Market research on the application, which could include: an estimate of the number of domestic entities within the application; an estimate of the amount of bulk HFCs used domestically within the application; an estimate of the projected annual growth rate for the duration of the period for which the application is seeking eligibility to receive ASAs, with supporting evidence by third-party sources;

- Economic research on the elasticity of demand for products or systems within the application, with supporting evidence by third-party sources;

- Research on whether products or systems in the application outside of the United States have had success in transitioning to substitutes or otherwise reducing use of HFCs;

- Other information that may be relevant as the Agency evaluates the petition, based on the factors listed in subsection (e)(4)(B)(i).

EPA notes that for an entity to be eligible to receive ASAs in a given calendar year, a complete petition should be submitted no later than January 31 two calendar years prior to provide the Agency sufficient time to review a petition and be able to issue allowances in advance of the statutory deadline of October 1 each year. For example, if an entity would like to receive allowances in calendar year 2027, the entity should submit a complete petition no later than January 31, 2025. EPA is setting this clear expectation so entities can factor this into their planning when deciding to petition EPA to be added to the list of eligible applications. This proposed timeline would allow the Agency the requisite time to review and take final action on the petition, consistent with the statutory timeline in subsection (e)(4)(B)(ii), and also issue a final rule to effectuate that decision in 40 CFR 84.13.

EPA proposes to allocate allowances to entities in a new application through the same manner as other entities receiving ASAs, per 40 CFR 84.13 and 40 CFR 84.31(h). EPA contends that allocating allowances based on the established regulatory approach would be the fairest and most transparent method of determining allowance allocations for entities in a new application. While EPA is proposing that a petition be required to include

some of the information that would be necessary to determine an allowance allocation, it is possible that not all entities within an application would be involved in the submission of the petition. In other words, having entities within a new application request ASAs by July 31 like all other applications (per 40 CFR 84.13(b)) would ensure that all entities in a new application have equal opportunity to request allowances. This may mean that in cases where there is a final rule pending to add an application to the list of entities eligible for ASAs at 40 CFR 84.13, any entity wishing to be eligible for ASAs in the next calendar year would need to provide the information required at 40 CFR 84.13(h)(2) by July 31.

EPA proposes that if a petition is granted and a new application is listed as eligible to receive ASAs, that eligibility would apply until the end of the five-year review cycle during which its petition was granted. Per subsection (e)(4)(B)(v), EPA must review each ASA use receiving an allocation of allowances not less frequently than once every five years. EPA proposes that, at the end of each five-year review cycle, it will review any applications listed in 40 CFR 84.13(a) at the time of review, regardless of how they were initially included on the list. For example, the five-year review period covered in this proposed rule includes calendar years 2026 through 2030. If a petition were granted to receive ASAs starting for calendar year 2028, that application would be eligible for calendar year 2028, 2029, and 2030 allowances, and then EPA would review the eligibility for that application to continue receiving ASAs starting with calendar year 2031 allowances.

Consistent with the reporting requirements under 40 CFR 84.31(a), EPA is proposing that all reports, petitions, and any related supporting documents must be submitted electronically in a format specified by EPA;²⁹ and quantities of regulated substances must be stated in terms of kilograms unless otherwise specified. EPA is proposing that these records and copies of reports required by this section must be retained for three years.

VII. Proposed Revisions to Existing Regulations

EPA finalized an approach under the Allocation Framework Rule for issuing ASAs for the initial years after enactment of the AIM Act. EPA set up a framework to determine ASA

²⁹ Currently, most HFC reports under the AIM Act are submitted through the HAWK module in the electronic Greenhouse Gas Reporting Tool (eGGRT).

allocations for calendar years 2022 through 2025 for five of the six applications identified in the AIM Act: propellants in MDIs; defense sprays; SCPPU foam for marine use and trailer use; etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector; and onboard aerospace fire suppression. As explained in more detail in the Allocation Framework Rule, EPA allocates ASAs differently for MCMEU, given the complex nature of the way DOD sources and uses HFCs in the mission-critical context (86 FR 55116, 55153, October 5, 2021).

The 2024 HFC Allocation Rule did not reopen the methodology for issuing ASAs but noted that the Agency had

begun development of this proposed rule to review and consider whether to renew eligibility for each of the six applications for ASAs and would herein consider revisions to existing regulatory requirements (88 FR 46836, 46840, July 20, 2023). As EPA foreshadowed in the 2024 HFC Allocation Rule, the Agency is proposing targeted regulatory changes after considering whether any changes should be made to the existing regulatory requirements governing ASAs based on implementation over the past several years. EPA is also proposing one specific regulatory change to clarify how EPA's regulations would apply to any illegally imported HFCs that are seized and auctioned by enforcement officials, proposing to require exporting companies to report ITNs quarterly, and

proposing to simplify the "date of purchase" requirement for a RACA.

Under the current regulations established in the Allocation Framework Rule, EPA issues ASAs based on multiplying the company's HFC use in the prior year by the higher of:

- The AAGR of use for the company over the past three years; or
- The AAGR of use by all entities requesting that type of ASA (e.g., for MDIs) over the past three years.

For the calculation of AAGR, EPA calculates the growth rate between the first and second year plus the growth rate between the second and third year, divided by two. The formula is as follows:

$$\left(\frac{\text{Application or Entity HFC Purchases in Year 2}}{\text{Application or Entity HFC Purchases in Year 1}} - 1 \right) + \left(\frac{\text{Application or Entity HFC Purchases in Year 3}}{\text{Application or Entity HFC Purchases in Year 2}} - 1 \right)$$

2

EPA relies on activity from July 1 to June 30 for each of the three preceding years prior to the annual allocation because of the biannual reporting deadlines and to include the most recent year of data prior to the October 1 allocation deadline in the allowance allocation determinations. EPA established the information an entity requesting ASAs must provide in 40 CFR 84.31(h)(2). EPA is proposing to codify the existing practice such that entities reporting on or applying for ASAs provide supporting documentation to verify reported data on total quantities of HFCs acquired through conferring allowances, expending allowances for direct import, purchases without expending allowances, and quantity held in inventory.

EPA also established that the Agency would consider unique circumstances that are not reflected by the rates of growth calculated in the methodology outlined above that are also factually documented when determining allowance allocations. EPA finalized the following circumstances as potentially meriting an increased allocation to an individual company beyond historical growth rates: (1) additional capacity will come on line in the next year, such as a new manufacturing plant or expanded manufacturing line, (2) a domestic manufacturer or some of its manufacturing facilities has been acquired, and (3) a global pandemic or other public health emergency increases demand for use of HFCs in an application, such as an increase in

patients diagnosed with medical conditions treated by MDIs. These scenarios could provide reasons to increase allowance allocations to affected companies in the affected years. Furthermore, if a company wanted to make a claim that it qualifies for individualized treatment due to one of these unique circumstances, the company must sufficiently document in a verifiable way why it qualifies. Specific documentation includes, but is not limited to, recent invoices for new tools; permit documentation for new facilities, facility expansion, or installation of equipment related to retooling; agency or company press releases for the launch of new products; or Securities and Exchange Commission filings documenting facility acquisitions or expansions. Ultimately, accommodating unique circumstances that are fully documented and proven help the Agency fulfill Congress's mandate that EPA "allocate the full quantity of allowances necessary" (86 FR 55116, 55151, October 5, 2021). As a result of the multiple allocations between 2021 and 2023 and the lessons learned through this process, EPA is now proposing limited changes to these existing regulations.

Specifically, EPA is proposing: to require companies provide the total expected amount of HFCs they intend to purchase in the calendar year, to expand permissible scenarios that could qualify as unique circumstances, a different allocation methodology for certain very small users of HFCs and entities with irregular purchasing history, how to

account for inventory in allocation decisions, new requirements for conferrals of MCMEU allowances, to establish a pool of set-aside allowances for situations that meet the criteria for unique circumstances related to medical conditions treated by MDIs, and to allow ASA holders to return a portion of their allowances voluntarily if they do not intend to use them. EPA is proposing other specific regulatory changes to: clarify how EPA's regulations would apply to any illegally imported HFCs that are seized and auctioned by enforcement officials, require exporting companies to report ITNs quarterly, and simplify the "date of purchase" requirement for a RACA.

A. Expected Total HFC Purchases

Under EPA's current program, entities may voluntarily state the total amount of HFCs they expect to purchase for the next year. EPA has encouraged entities to provide this data on a voluntary basis to provide an additional data element for the Agency to consider in making allocation decisions.

EPA proposes to amend the regulations to require all entities to provide their total expected HFC purchases for the next calendar year as a component of overall applications due July 31 for ASAs for the following calendar year. Under this proposed requirement, entities would be required to provide an estimate of the total quantity of HFCs they expect to purchase next year based on their expected eligibility for allowances. EPA will allocate at that level if it is lower

than what that entity is eligible for based on the regulatory formula.

EPA is proposing this approach to better understand each entity's HFC needs in the next year. The regulatory allocation methodology established in the Allocation Framework Rule, and outlined at the start of this section, is designed to determine an allocation based on "projected, current, and historical trends." However, this formula may not fully take into account other considerations that could impact an entity's HFC needs in the next year. This proposed approach may also avoid overallocation at the expense of general pool allowance holders.

B. Unique Circumstances

Under EPA's current regulations, entities may request that EPA consider unique circumstances that are not reflected by the rates of growth calculated. Entities "must provide additional information if requesting that EPA consider unique circumstances" under 40 CFR 84.13(b)(1). EPA is proposing to codify into the regulations the Agency's existing practice of requiring entities to provide supporting documentation to verify any claimed need. EPA previously codified three situations that would be considered as unique circumstances (40 CFR 84.13(b)(1)). After multiple allocations and many conversations with stakeholders, EPA is proposing to add to the list of unique circumstances under which EPA may allocate additional allowances beyond what is calculated from the regulatory allocation formula. EPA is also proposing to broaden the third unique circumstance related to MDIs.

First, EPA is proposing to create a unique circumstance for economic disruption outside the immediate control of the entity applying for ASAs, such as an economy-wide recession or other documented short- to medium-term market events that negatively impact a company's operations, such as a strike that affects product demand or supply chain disruption. EPA proposes to consider this situation as a unique circumstance as such an event could lead to an increased need to purchase HFCs beyond what is reflected in the regulatory formula, but likely would not be captured under an existing scenario that EPA would consider as an acceptable unique circumstance. If finalized, entities would still have to submit documentation that verifies that this situation has taken place, the current status of the market event (e.g., whether it has concluded and demand for the HFCs has returned), and that this situation has materially impacted an

entity's HFC needs. The entity would also have to provide supporting documentation to justify the projected amount of HFCs needed, including explaining how projections compare to pre-market event use.

EPA is also proposing to add building a stockpile of a specific HFC as a scenario which EPA would consider a unique circumstance in the event a major producer for an application announces they will be ceasing production of the HFC used by the application-specific entity in the near future. An entity could request additional allowances for the purpose of building inventory ahead of the cease in production. For an entity to be eligible for additional allowances under this unique circumstance, EPA proposes that the entity must provide EPA with a letter from their supplier signed by a responsible corporate officer³⁰ stating that the supplier is ceasing all production of the HFC at issue within three years. Further, EPA proposes that an eligible entity must certify that they have regulatory requirements beyond the 40 CFR part 84 requirements that limit its ability to switch suppliers or there are no other suppliers that could meet their needs (e.g., because there no other chemical manufacturers that can supply the needed HFC). EPA proposes to also require evidence that the entity has a restricted HFC supply chain, such as required purity requirements. If additional allowances were granted because of this requested unique circumstance, EPA proposes to require reporting specific to the building of inventory by the entity that would be allocated ASAs in advance of their supplier's production facility ceasing production. Such inventory buildup must be held by the entity that is allocated allowances, and EPA would subtract those quantities from the entity's purchase history such that it is not included in the regulatory formula to determine the entity's allocation the following year.

EPA is also proposing to expand the scope of the unique circumstance for a global pandemic or other public health emergency that increases patients diagnosed with medical conditions treated by MDIs to include "healthcare system needs." EPA notes that the reference in the regulations to an "other

public health emergency" is not limited to situations where the Department of Health and Human Services (HHS) has officially declared a public health emergency. The proposed expansion of the unique circumstance is a direct outgrowth of experience over the past three years of implementing the phasedown and is designed to ensure a sufficient volume of HFCs is available to manufacture MDIs to treat asthma, chronic obstructive pulmonary disease, and other respiratory diseases when unexpected market events occur.

EPA proposes to define a healthcare system need as circumstances where an increase in demand for MDIs used to treat asthma, chronic obstructive pulmonary disease, and other respiratory diseases may occur because of a change in market conditions that otherwise would not be included in calculated rates of growth. If finalized, EPA intends to consult closely with the FDA and potentially HHS more broadly before allocating allowances for "healthcare system needs."

Examples of the types of events that could fall into a healthcare system need include, but are not limited to:

- A manufacturer that makes MDIs outside of the United States stops selling approved MDI products in the United States;
- Major recall or suspension of production of alternative (non-MDI) emergency asthma treatments prompting increase in MDI demand;
- Change in preferred products from pharmacy benefit managers or State Medicare programs to patients;
- FDA compliance or enforcement actions that impact MDI market dynamics by reducing availability of generic drug products that;
- Significant increase in respiratory infections in general population (e.g., respiratory syncytial virus (RSV), coronavirus disease (COVID)); and
- Decrease in availability of active pharmaceutical ingredient or device component for one or more MDI manufacturers causing a supply shortage.

C. Methodology for Entities With Irregular Purchasing History and Very Small Users

EPA has observed that there are certain entities with purchase patterns for which the regulatory formula either is not able to calculate an allocation or applying the terms of the regulatory formula would produce absurd results. For these entities, EPA is proposing an alternative approach for calculating the quantity of allowances each entity is eligible to receive. Specifically, EPA is proposing to create an alternative

³⁰EPA is also proposing to define this term, which is used elsewhere under the HFC Allocation Program. For purposes of 40 CFR part 84, subpart A, EPA is proposing that *responsible corporate officer* and *responsible official* mean a person who is authorized by the regulated entity to make representations on behalf of, or obligate the company as ultimately responsible for, any activity regulated under 40 CFR part 84, subpart A.

method of allocating to entities that are either of the following: (1) Entity has small purchases of HFCs (<100 kg) at least one of the last three years where their purchase history would result in 200 percent or higher AAGR of use for the company over the past three years, or (2) entity's growth rate cannot be calculated because it had zero purchases in one of the last three years for reasons other than newly using HFCs. For entities that fall into either category, the Agency is proposing to allocate the highest, as measured in exchange value equivalent (EVE), verified purchase amount in the last three years.

With respect to the first category, EPA is proposing these cutoff numbers to allow for some narrow flexibility in an entity's purchasing patterns and to recognize the variability for entities that purchase relatively small quantities of HFCs. EPA is proposing to move away from applying the existing regulatory formula for entities where a relatively small fluctuation in purchasing measured on a mass basis would result in an extraordinarily large and nonsensical growth rate. EPA reviewed data from the past three October 1 allocation cycles and found that the top three highest entity-specific AAGRs from each of the allocation cycles ranged from about 125 percent or higher, with the lowest "small use" of HFCs in a particular year of less than 5 kg. Thus, the Agency is proposing 200 percent as the AAGR cutoff and less than 100 kg as the "small use" cutoff.

For the second category, it is mathematically impossible to calculate a growth rate based on zero purchases in a year under EPA's existing regulatory formula. Entities that had zero purchases in one of the three years under consideration would also have to be determined to be an active purchaser prior to a year with zero purchases. It is not EPA's intent to capture entities that are new in an application under this alternative pathway.

EPA is separately proposing a different allocation approach for all very small purchasers of HFCs. EPA is proposing to define entities in this category as anyone whose HFC purchases add up to less than 100 kg in each of the previous three years. The Agency recognizes there are certain entities that purchase the same small quantities of regulated substances every year who may not follow a growth-oriented use similar to that of entities that use HFCs in wide-scale, commercial operations. Examples of these uses could include those meant for small batch use in one of the eligible applications for research and development and/or entities that may

not yet be manufacturing commercially if, for example in the case of MDIs, the entity is still in the product development phase, is only manufacturing small numbers of MDIs (e.g., for clinical trials), and is waiting for final FDA approval. For these entities, EPA proposes to allocate the highest, determined on an EVE basis, of an entity's past three years' worth of purchases, since their use stays relatively consistent over time. EPA is taking comment on whether the Agency should look back further at up to five years' worth of purchase history. EPA based this number on the past three October 1 allocation cycles, and reviewed purchasing patterns for the smallest purchasers who are not new to the HFC market and would not be considered entities with irregular purchase histories. EPA is taking comment on the cutoff threshold on what size purchases would allow for an entity to be considered a "small user." EPA is also soliciting comment on whether, combined with this approach or as an alternative to this approach, EPA should round allowance allocations for very small purchasers to account for purchase of a specific cylinder volume. In order to take this approach, EPA requests comment on the typical cylinder volume sizes used in these small purchases. EPA would also require eligible applicants to provide information on the cylinders being purchased in their biannual reporting.

D. Average Annual Growth Rate Calculations

EPA currently calculates AAGR on an MTEVe basis. This process involves converting the mass (e.g., kilogram) of each HFC into MTEVe and summing those MTEVe quantities across each year, before applying the AAGR formula described earlier in this section. The Agency is providing courtesy notice of a change going forward to calculate AAGR on a mass basis. This new process would be based on summing all HFCs together for each year to get a total quantity based on mass and using this mass quantity in the AAGR formula. AAGR calculations are not codified in the regulations, so this is not a regulatory revision, but EPA is providing this notice given broader methodology changes proposed in this rulemaking.

EPA is modifying this calculation because we are concerned that as entities transition to lower-GWP HFCs, an AAGR calculated on an MTEVe basis will not appropriately reflect their projected demand for HFCs in the upcoming calendar year. For example, under an MTEVe-based AAGR

calculation, an entity transitioning to a lower-GWP HFC, which has an associated lower EV, could have a negative AAGR while simultaneously experiencing a growth in actual HFC usage. In this situation, the entity would be allocated an amount of allowances lower than its current year's HFC use. While entities will require fewer allowances to purchase these lower-GWP HFCs, until a company has a full three years of purchase data with this lower-GWP HFC, the calculated allowances may be substantially less than projected demand, either increasing by too small an amount or in some cases declining despite an actual increase in demand. It would be a perverse outcome for entities to receive an insufficient HFC allocation because they are transitioning to a lower-GWP alternative.

In addition, growth calculated on a mass basis is more reflective of demand than MTEVe and is not impacted by any potential swings resulting from purchasing differing levels of HFCs with different EV values each year. For example, a company purchasing 20 kg of HFC-41 in one year and 40 kg of HFC-23, which has an EV approximately 160 times that of HFC-41, the following year would have the same growth rate as a company purchasing 20 kg of HFC-41 in one year and 40 kg of HFC-41 the next year (i.e., the growth rate for that year is 100 percent for both companies versus 32,000 percent for the first company and 100 percent for the second company).

E. Inventory

EPA's current regulations require entities receiving ASAs to provide, as part of their biannual reporting requirements, information on the quantities of HFCs left in their inventory at the end of the previous six-month reporting period (40 CFR 84.31(h)(1)(iv)). Upon finalization of this rulemaking and heading into the allocation of calendar year 2026 allowances, EPA will have several years of data on inventory, including how inventory levels have changed over time. In the Allocation Framework Rule, EPA noted its intent to account for changes in inventory in the allocation of ASAs (86 FR 55116, 55152, October 5, 2021).

EPA is proposing to include verified changes in inventory into the calculation of the quantity of HFCs an entity used over the 12-month period for all allocations except MCMEU. Changes in inventory are documented information as to how an entity used HFCs in a particular year. For example, if an entity purchased 100 kg of HFCs,

and their inventory grew by 50 kg, this would suggest that the entity used 50 kg in the manufacturing process under the applicable application. In this instance, consideration of purchases minus inventory buildup is a more accurate reflection of HFC use by the entity than HFC purchases would be alone. EPA proposes to factor in both drawdown and growth in inventory; a drawdown of inventory would be added to HFC purchases and a buildup of inventory would be subtracted from HFC purchases.

EPA is proposing that this approach would not apply to calculation of MCMEU allowance allocations because DOD has a history of building up inventory and may need to do so for mission-critical or national security purposes. The Agency acknowledges that building inventories can be an important strategy for other entities to navigate changing market conditions, especially in advance of the 2029 reduction step. Therefore, as part of this proposal, EPA is also including that entities may provide a rationale as to why a buildup in inventory should not be subtracted from the quantities of HFCs they annually acquire. An example of what the Agency would consider to be acceptable rationale would be if a producer announced that they would be ceasing production of an HFC that is used in a particular application, and the entity wanted to build up inventory of that HFC to continue manufacturing of their product while they figured out their transition timeline. Another example could include a situation where an entity had to purchase a minimum volume (e.g., a full ISO tank) and that last purchase resulted in an increase in inventory.

In the alternative, EPA is proposing to not incorporate small amounts of growth in inventory in allocation decisions. EPA would propose to define a small amount of growth as below 20 percent or, alternatively, growth in inventory for only a single year. EPA invites comment on this alternative pathway and also what the Agency should consider to be a small amount of inventory growth.

F. Department of Defense Conferrals

In the Allocation Framework Rule, EPA finalized that anyone conferring an ASA, except for the conferral of allowances for MCMEU, would be required to submit information about each conferral prior to conferring allowances (40 CFR 84.31(h)(4)). While DOD was not required to submit conferral information to EPA, DOD was required to maintain records documenting the conferral(s) of ASAs to

other entities up to and including the producer or importer of the chemical (40 CFR 84.31(h)(7)(iv)).

In order to ensure that certain imports are not delayed or denied, EPA is proposing to modify the 40 CFR part 84, subpart A regulations to require that DOD report information consistent with the required reporting of conferral data from all other ASA holders. This would include the identity of each conferrer and conferee and the quantity in MTEVe of ASAs being conferred. This proposed regulatory change would not be a significant burden for DOD because DOD is already required to track this data internally (40 CFR 84.31(h)(7)).

If finalized, this regulatory revision would bring the process for conferring MCMEU allowances in line with other entities receiving ASAs. The Allocation Framework Rule noted that one of the goals of this requirement was “to ensure EPA has the requisite information to track application-specific allowances” (86 FR 55116, 55189, October 5, 2021). When an HFC supplier reports to EPA that they have expended ASAs other than MCMEU allowances, conferral reports have allowed EPA to confirm whether that supplier was in possession of ASAs. With MCMEU allowances, given that DOD is not required to share information about the conferral of MCMEU allowances with EPA, the Agency has encountered difficulty verifying whether suppliers are in possession of MCMEU allowances. EPA is particularly concerned that without conferral information for MCMEU allowances, the Agency would recommend that U.S. Customs and Border Protection (CBP) deny entry of an import of HFCs bound for MCMEU. This could cause unnecessary delays for DOD and extra costs for importers. Different reporting requirements for MCMEU allowances has resulted in unexpected confusion and delays in the approval of some producer and/or importer quarterly reports, increasing administrative burden for DOD, entities who are producing and importing on behalf of DOD, and EPA. If finalized, this regulatory change would help address these issues.

In addition to bringing the process for conferring MCMEU allowances in line with other entities receiving ASAs, EPA is proposing one additional requirement for the conferral of MCMEU allowances, per a request from DOD. To enable clearer tracking of MCMEU allowances from initial conferral to expenditure, EPA is proposing to require that a certificate number, generated by DOD, be reported to EPA for each conferral and expenditure of MCMEU allowances. For example, if an intermediary receives

a conferral of MCMEU allowances from DOD and then confers the allowances further to a supplier, both DOD and the intermediary must report the same certificate number as part of the conferral. Finally, when the supplier expends the conferred MCMEU allowances for production or import of HFCs, the supplier must report the certificate number in the same report in which the expenditure of MCMEU allowances is reported. This additional layer of tracking conferrals could further relieve any unexpected confusion.

G. Limited Set-Aside for Unique Circumstances Related to MDIs

Some stakeholders have expressed concern that an annual allocation decision is not always sufficient to meet the needs of the entities eligible for ASAs. Entities have noted that unanticipated events may arise after July 31, when requests for ASAs are due, that legitimately necessitate an increased need to purchase more HFCs than expected. EPA received a comment to the Allocation Framework Rule (86 FR 55116, October 5, 2021) requesting that EPA create a separate additional pool of allowances to accommodate growth, new mid-year entrants, and “under-allocation.” At the time of that rulemaking, EPA determined that establishing such a pool of allowances was unnecessary because the Agency had set up an allocation formula to allocate the full quantity of allowances necessary, and setting allowances aside just in case they were needed would reduce the allowances available to general pool allowance holders thereby reducing how many HFCs can be imported or produced if the set-aside allowances went unexpended. EPA also noted that a company can access HFCs from the open market; if a company used more HFCs in a given year, that increased use would be reflected in the next year’s allocation. However, EPA also noted that the Agency would learn from implementation of the program and consider adjusting the methodology (86 FR 55116, 55151, October 5, 2021).

Based on the Agency’s observations in implementing the ASA allocations over the past three years, EPA is proposing to create a set-aside of allowances specifically for situations that meet the criteria for the unique circumstance established in 40 CFR 84.13(b)(1)(iii), including the proposed changes described in Section VII.B of this preamble. In other words, this would be a set aside to accommodate unforeseen need for regulated substances related to a global pandemic, other public health emergency, or other healthcare system needs related to increased patients

diagnosed with medical conditions treated by MDIs. EPA still sees significant downsides to creating a set-aside of allowances for unforeseen demands in the eligible applications as outlined in the Allocation Framework Rule, but does see benefit in creating a set-aside for the singular narrow possibility of a public health emergency or other unforeseen event that would specifically affect availability of MDIs. As a result, EPA is proposing to set aside allowances that would be available for the use of HFCs as a propellant in MDIs if the requester meets the criteria for the unique circumstance as defined in 40 CFR 84.13(b)(1)(iii). Application-specific entities could apply to EPA for these allowances based on a demonstrated need to purchase more HFCs in the present calendar year in light of events that were unforeseen at the time of the entity's application for ASAs for the calendar year at issue. For example, during the beginnings of the COVID-19 pandemic in 2020, MDI manufacturers purchased nearly 40% more HFC-134a than they did in 2019, which is substantially more than they would have been allocated based on Year 3 purchases and the application's AAGR; this extra demand also could not have been predicted in July 2019, when manufacturers would have applied for calendar year 2020 allowances. EPA would consult with the FDA in determining whether the presented situation meets the criteria as defined, but scenarios could include a global pandemic. Other examples of situations that could qualify are described in Section VII.B. EPA is also taking comment on whether there are other analogous situations where an unexpected increased need for HFCs resulting from the other established and proposed unique circumstances could arise in which the facts would justify the potential use of another set-aside for ASA holders. If a commenter identifies such a situation, EPA requests that the commenter also provide information on how EPA would appropriately cabin requests to demand that was truly unexpected and unforeseeable and also information on what entities should have to provide as evidence when applying for set-aside ASAs. At a minimum, it seems appropriate to require a requesting entity to present EPA with information on how facts have changed that were unknowable at the time the entity applied for that year's ASAs and also evidence that the entity has been unable to acquire needed HFCs from the open market or through allowance transfer. EPA seeks comment

on the appropriate records that would need to be provided to EPA to document the entity's unsuccessful efforts to acquire HFCs without additional allowances from EPA. EPA would likely require at least some of the records described in Section VI of this preamble.

EPA is presenting a series of options for comment on how such a set-aside pool would be created. Under Option 1, which is EPA's preferred option, EPA would form this pool by setting aside 10 percent of the allocation of certain entities—those that produced or imported HFCs during 2011–2019 to serve the applications eligible for ASAs, except MCMEU. An entity that produced or imported HFCs in the time range of 2011–2019 for a separate entity now receiving ASAs is getting a current HFC allowance allocation based on those past purchases. At the same time, ASAs are being issued to entities for conferral to a producer or importer. This can be viewed as a double allocation. For example, if Entity A imported for an MDI manufacturer in 2011–2019, those historic imports are included in calculating Entity A's allowance allocation. In other words, Entity A is getting a higher allowance allocation because of their imports for an MDI manufacturer. At the same time, the MDI manufacturer is being allocated ASAs, which can be conferred to Entity A to import HFCs for the MDI manufacturer. Therefore, Entity A has two sets of allowances available to them as a result of being an importer for MDI manufacturers. Because of this aspect of the design of EPA's allocation system, if EPA were to create a set-aside of allowances for application-specific entities, EPA proposes to hold back 10 percent of the allocation of entities that produced and imported for application-specific uses during 2011–2019. This appears more equitable than holding back a set amount of allowances from all general pool allowance holders, since only those that historically imported and produced for application-specific uses may have two sets of allowances now available to them. Of course, because a company that historically produced or imported for application-specific uses has two sets of allowances available to them, it seems that they should have sufficient production and/or consumption allowances available to purchase additional HFCs for an application-specific entity if an unexpected need arises. EPA is soliciting comment on whether, because of this fact, a set-aside is not truly needed, or if a set-aside is necessary because historic importers and

producers are requiring conferral of ASAs to meet the needs of application-specific entities.

Under this proposed Option 1 approach, EPA would withhold 10 percent of the identified entities' allowances until April 30. If no application-specific entity applied for the allowances by April 30, then the withheld allowances would be issued to the entities from which they were withheld. If a request is pending, EPA would withhold allowances until that request was evaluated and allowances were issued. Such issuance would be done in a proportionate fashion if some, but not all, of the set-aside allowances were allocated to application-specific entities. EPA seeks comment on whether April 30 is late enough in the year to provide the appropriate safety value for unforeseen public health emergencies and other healthcare system needs.

Alternatively, Option 2 would be that EPA would create a set-aside pool for application-specific entities in the event of a public health emergency or other healthcare system need from any revoked allowances, including from administrative consequences already finalized. In the Allocation Framework Rule, EPA created administrative consequences whereby EPA can adjust allowance allocations if EPA determines that a person failed to comply with certain requirements relating to the HFC allowance allocation and trading program. Under the administrative consequence tool, a revoked allowance is one that EPA takes back from an allowance holder and redistributes to all other allowance holders (86 FR 55116, 55169, October 5, 2021). Under this second option, instead of redistributing revoked allowances to all other allowance holders, EPA would put the revoked allowances into a set-aside pool in case additional ASAs were needed as a result of a public health emergency. One potential flaw with this proposed approach is that to date, entities could expend ASAs to either produce or import HFCs. EPA created ASAs to function this way because end users in the identified applications may not know in advance how they will procure HFCs, and this method provides flexibility to ensure that end users receive the "full quantity of allowances necessary," (86 FR 55148). To ensure that these ASAs are provided within the overall annual production and consumption caps, EPA subtracts the amount of ASAs allocated from both the production and consumption general allowance pools (40 CFR 84.9(a)(3); 84.11(a)(3)). However, to date, EPA has only revoked consumption

allowances.³¹ EPA would likely need to hold back some amount of production allowances under this option, up to 1,000,000 MTEVe, to ensure sufficient allowances were available.

A third, less preferred option, would be to hold back a set amount of allowances. This set-aside would be created from all general pool allowance holders. EPA proposes that the Agency could hold back allowances in the range of 500,000 to 1,000,000 MTEVe production and consumption allowances. If no application-specific entity applied for the allowances by April 30, then the withheld allowances would be issued to the entities from which they were withheld. If a request is pending, EPA would withhold allowances until that request was evaluated and allowances were issued. As explained previously, this approach seems less equitable than Option 1. This approach also does not allay the concerns identified by EPA in the Allocation Framework Rule for establishing a set-aside for ASAs. However, EPA is interested in stakeholder input regarding this option.

Finally, as an alternative to creating a set-aside at all, EPA is taking comment on the possibility of allowing conferral of ASAs from other applications in the event an unforeseen event that meets the unique circumstance outlined in 40 CFR 84.13(b)(1)(iii). Under EPA's current regulations, conferred ASAs may only be used to produce or import HFCs for the application-specific use associated with the allowance(s) (40 CFR 84.13(h)). Under this alternative, EPA would amend the regulations such that if an unforeseen event meeting 40 CFR 84.13(b)(1)(iii), ASAs could be conferred and expended to produce or import HFCs for application-specific use different from the application associated with the allowance. For example, if EPA agreed that there was a public health emergency that created an unexpected need to purchase more HFCs for MDI manufacturing, under this approach ASAs allocated for aerospace fire suppression could be conferred to import or produce HFCs for use in MDI manufacturing.

EPA seeks comment on these proposals, in particular on the scope of the need, the number of allowances that are expected to need to be set aside, the date by which requests must be received to be considered, and all other aspects of the proposal.

H. Return of Unneeded Allowances

EPA is aware that some application-specific entities are allocated more allowances than are necessary to accommodate their needs for a given calendar year. This may be because for that specific year, the regulatory formula overestimated that individual entity's need. It is also possible that the entity's expectations for the year did not match reality because of unexpected intervening events, such as a drop in demand for the entity's products or supply chain difficulties. In light of these considerations, EPA is proposing to allow ASA holders to return their allowances voluntarily if they do not intend to use them. ASA holders could return allowances up to and including June 30 of the year for which the allowances can be expended (e.g., calendar year 2025 allowances would have to be returned by June 30, 2025). This would be completely optional and intended to be used at the discretion of the ASA holder. EPA proposes to use any returned allowances to either: (1) fulfill unexpected higher demand of another ASA holder (see proposal in Section VII.G of this preamble); or (2) return the allowances to the general pool of allowance holders proportionate to respective market shares. EPA sees benefit of redeploying allowances that would go unused into the overall HFC market for smoother transition and to ease the overall HFC phasedown.

EPA is soliciting comment on this proposal, including whether it is needed if EPA finalizes other proposals outlined in this notice. EPA is particularly interested in whether this proposed approach is needed if EPA finalizes the requirement for entities to include in their application for allowances their anticipated need for the following calendar year. EPA is also interested in stakeholder input on whether codifying an ability for entities to return unneeded allowances would have unintended negative effects, including limiting the availability of allowances for transfer to another application-specific entity that has an unanticipated need for more allowances during the calendar year.

I. Enabling Auctions of Illegally Imported HFCs

In addition to the proposed changes to EPA's application-specific regulations outlined in this section, EPA is also proposing a targeted change to the regulations related to the enforcement and compliance provisions EPA finalized in the Allocation Framework Rule. As explained in the Allocation Framework Rule, EPA established a comprehensive system of mechanisms

that together and by themselves discourage and prevent illegal production, import, and subsequent sales of illegally produced or imported HFCs. Since the requirement came into effect that entities must expend allowances to produce or import HFCs, EPA has been working with partner agencies across the Federal government to implement a comprehensive enforcement and compliance program.

One issue that EPA has been grappling with is what to do with HFCs that an entity imports or attempts to import without expending the requisite number of allowances. Among other things, the Federal government has been considering reexport, destruction, and auctions as potential available pathways for such HFCs. EPA is in the process of working with partner Federal agencies, particularly CBP, to consider the feasibility of an auction of HFCs that have been stopped or seized by CBP as was done in the past with illegally imported ODS. As part of this process, EPA has identified a provision in the existing 40 CFR part 84 regulations that could be read to inhibit some auctions of HFCs, although there is nothing in 40 CFR part 84 that prohibits auctions. In order to ensure auctions are an option, if the Federal government otherwise chooses to pursue them, EPA in this rulemaking is proposing to amend the prohibition relating to the sale and prohibition of illegally imported HFCs in 40 CFR 84.5 to clarify that a person may sell or distribute, or offer for sale or distribution, a regulated substance purchased at an auction authorized by CBP if the buyer expended consumption allowances or ASAs in a quantity equal to the EV-weighted equivalent of the illegally imported regulated substances. This proposed change would provide explicit clarity to an entity that purchases HFCs at such an auction that the HFCs they purchase can be sold as if they were initially imported with allowances.³²

EPA is also proposing targeted changes to the reporting requirements to provide clarity in the regulations for how such purchases would be reported. EPA proposes that entities purchasing HFCs at auction would need to report the import of those HFCs (that was done by another entity prior to the auction purchase) under 40 CFR 84.31(c)(1) and maintain records consistent with 40 CFR 84.31(c)(2). EPA proposes that entities would use the date that entry

³¹ See <https://www.epa.gov/climate-hfcs-reduction/administrative-consequences-under-hfc-allocation-rule>.

³² The sales provision in 40 CFR 84.5 does not apply to other government personnel or contractors that need to move the HFCs for eventual disposition consistent with the regulatory requirements, such as through an auction with verification by EPA prior to sale.

was filed for the HFCs purchased at auction for purposes of 40 CFR 84.31(c)(1) reporting and maintain records of that purchase under 40 CFR 84.31(c)(2). This would provide a date that can be easily verified and would align with when the entity formally expressed intent to CBP to enter the HFCs into U.S. commerce.

Additionally, EPA is proposing that entities who purchase HFCs at auction would not be subject to the advance notification requirement in 40 CFR 84.31(c)(7) for HFCs purchased via an auction authorized by CBP, as the window for the notification would have already passed and EPA would be verifying whether a prospective purchaser has sufficient allowances as part of any auction. However, EPA proposes that entities would still have to provide notification to EPA via a CBP-authorized electronic data interchange system, such as the Automated Broker Interface, prior to the HFCs entering U.S. commerce and provide the same data elements as in 40 CFR 84.31(c)(7). If a certificate of analysis (see 40 CFR 84.31(c)(7)(xvi)) is not available at the time of filing entry, EPA is proposing that the entity would need to do any required sampling and testing prior to sale in U.S. commerce.

J. Quarterly Exporter Reporting of Internal Transaction Numbers

ITNs uniquely identify shipments being exported from the U.S. to another country. EPA currently requires companies to report ITNs when they request additional consumption allowances after exporting bulk HFCs. EPA is proposing to require companies to additionally report ITNs quarterly for all HFC exports. It is EPA's understanding that reporters can obtain ITNs from either CBP or their broker with relative ease, once they have a process to do so in place. Many reporters already gather ITNs on a regular basis for the purpose of submitting RACA reports.

Under CBP regulations, there are some instances in which exporters may acquire ITNs but are not required to do so. These instances may include exports to Canada and lower-value exports, for example. EPA proposes that exporters would not be required to report ITNs for shipments that are exempt from needing ITNs under CBP regulations. EPA is not proposing any changes to the existing regulations related to RACAs, so reporters would still need to obtain ITNs for any exports listed in RACA submissions (e.g., exports to Canada).

EPA is proposing to require exporters to report ITNs quarterly to better enable EPA to perform quality assurance and

integrity checks between exports reported to the Agency under the reporting requirements in 40 CFR 84.31 with Customs records. This, in turn, will enable EPA to better ensure the accuracy of the overall volume of HFCs that are exported, which is a critical component of the overall calculation of the HFC phasedown, in addition to being communicated for transparency to stakeholders and being a key part of the Agency's international reporting obligations under the Montreal Protocol.

K. Date of Purchase for Requests for Additional Consumption Allowances (RACAs)

EPA is proposing to change the existing requirement in 40 CFR 84.17(a)(5) to report the date HFCs were purchased as part of a RACA. Instead, EPA would require an entity to only report whether the HFCs exported were purchased before January 1, 2022, or after that date. EPA has received feedback from entities requesting RACAs that it is difficult to report the date HFCs were purchased because the information can be difficult to obtain. For example, a company may purchase several batches of HFCs over the course of several months and combine these batches into a homogenous mixture in an on-site holding tank. These batches of HFCs could come from multiple suppliers. The contents of the holding tank are then siphoned off into smaller containers and exported to a foreign country, at which point the company seeks a RACA for those exported HFCs. In this scenario, it is difficult to determine what the "date of purchase" was for any given container of HFCs that was exported.

When EPA initially codified the requirement to provide the date purchased as part of a RACA, the primary purpose of this data element was to track how much material is being exported out of pre-2022 inventory, before the phasedown program was in effect. This, in turn, helps the Agency understand certain market trends (e.g., how many containers are being sold out of older inventory as opposed to more recently purchased inventory). However, EPA can track this trend with a simpler data element. Accordingly, EPA proposes to change the existing requirement to provide the date HFCs were purchased to whether the HFCs were purchased before or after January 1, 2022.

VIII. Authorization To Produce for Export

In previous rulemakings, i.e., the Allocation Framework Rule and the 2024 Allocation Rule, some commenters

expressed concern that under EPA's methodology for issuing production and consumption allowances, certain producers were not allocated sufficient allowances to meet the demands of their international customers working in applications for which ASAs were allocated to the domestic manufacturers. Commenters said that foreign semiconductor manufacturing remains important even while domestic semiconductor manufacturing increases under the CHIPS Act.

This issue was generally beyond the scope of prior rulemakings, but EPA recognizes that under the methodology for issuing general pool production and consumption HFC allowances³³ in tandem with how ASAs have historically been issued, domestic HFC producers that manufacture low EV HFCs with proportionally smaller market shares may face challenges due to a combination of the phasedown itself, EPA's allocation methodology, and that EPA does not allocate ASAs for entities' operations outside the United States.

Subsection (e)(5) of the AIM Act provides that the Administrator may authorize an entity to produce a regulated substance in excess of the number of production allowances otherwise allocated to that entity, subject to several conditions including:

- The authorization is valid for a renewable period of not more than five years;
- Authorization must be established via notice and opportunity for public comment; and
- The production is solely for export to, and use in, a foreign country that is not subject to the prohibition in subsection (j)(1);³⁴ and
- The production so authorized would not violate the production or consumption limits.

EPA has received a request from Iofina Chemical (Iofina) to authorize additional production of HFCs under subsection (e)(5) that can be exported to supply semiconductor manufacturers outside of the United States. Iofina has informed EPA that it has experienced challenges acquiring HFC allowances via a transfer from another allowance holder so it can produce low-EV, HFC-41, to sell to semiconductor manufacturers abroad. Iofina has flagged

³³ EPA is not reopening nor proposing to revisit the methodology for issuing general pool production and consumption HFC allowances in this rulemaking.

³⁴ Given that the prohibition of (j)(1) does not take effect until 2033, and EPA is proposing to make allowances available to Iofina through 2030, EPA does not consider this restriction related to subsection (j)(1) as relevant to this rulemaking.

this challenge for EPA for several years. The company has also noted that even if it were able to secure a transfer for a single year, Iofina could not plan over multiple years.

EPA has considered Iofina's specific situation, the limited number of allowances that would be needed to accommodate its request, and its stated intent to export HFCs for use in an application that Congress specified in subsection (e)(4)(B) of the AIM Act, and is proposing to authorize Iofina to undertake additional production for export as contemplated by AIM Act subsection (e)(5). To operationalize this subsection of the AIM Act, EPA is proposing to establish a production for export category of allowances and associated recordkeeping and reporting requirements. EPA is proposing that this new category of allowances would be nontransferable. Consistent with language in subsection (e)(5) of the AIM Act that EPA may "authorize an entity" (emphasis added), the Agency is proposing that these production for export allowances would be available only to Iofina to supply regulated HFCs to application-specific end users located abroad, specifically and only for the etching of semiconductor material or wafers and cleaning of CVD chambers within the semiconductor manufacturing sector. EPA is proposing to issue 3,000.0 MTEVe of allowances annually to Iofina for the stated purpose for each of the calendar years 2026 through 2030.

EPA proposes to determine that authorization of production for export to Iofina in this instance is appropriate and consistent with subsection (e)(5) of the AIM Act. EPA proposes that this is particularly true where the ASA requirements of subsection (e)(4)(B)(iv) provide priority access to HFCs for defined applications. This proposal is intended to address a need that has been voiced consistently and exclusively by Iofina, for which Iofina has provided supporting information to substantiate the request.

EPA is proposing to allocate 3,000.0 MTEVe non-transferrable production for export allowances exclusively to Iofina on an annual basis for each of the calendar years 2026 through 2030. A detailed discussion of the rationale for the Agency's proposal follows.

A. To what entities is EPA proposing to allocate production for export allowances?

As described above, EPA is proposing to only allocate production for export allowances to Iofina. The Agency has determined that the company has demonstrated their need for production

for export allowances. Iofina has made good faith efforts to acquire allowances via an inter-company transfer and has had difficulty finding another allowance holder willing to transfer production and consumption allowances to them in order to produce regulated HFCs for export. Iofina has documented foreign customer demand in an application-specific end use for the HFC they produce. Iofina has committed to conduct extensive due diligence to verify and ensure that the HFCs they sell abroad are only sold to an entity that will use the HFC for the etching of semiconductor material or wafers and cleaning of CVD chambers within the semiconductor manufacturing sector and are not going to be diverted for some other use (e.g., destroyed for carbon credits, sold to another entity that will use the HFCs for another end use).

EPA has also considered how this authorization supports the HFC phasedown overall. Iofina produces only one HFC, HFC-41, one of the lowest EV HFCs controlled by the AIM Act with an EV of 92, at its facility in Covington, Kentucky. Iofina produced HFCs during the 2011–2019 timeline and in subsequent years, and accordingly have been allocated allowances for calendar years 2022, 2023, and 2024. Because Iofina has always produced a low EV HFC, their allocation is smaller than companies that have historically produced higher EV HFCs, which now have flexibility to transition into a lower EV HFC at higher volumes. HFC-41 comprises a small portion of overall U.S. HFC calculated production³⁵ (0.02 percent in 2022 on a mass basis and approximately 0.001 percent on an EVE basis), and Iofina is the only U.S. producer of HFC-41 for consumptive use. Further, HFC-41 has a lower EV than all other regulated substances used in the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector. Coupled with the extremely small volume of allowances that this production would require, EPA sees authorizing this additional flexibility as appropriate to support continued U.S. production of HFC-41.

EPA recognizes that upon reviewing this proposed rulemaking, there may be other HFC producers who would be interested in receiving production for export allowances for application-specific uses abroad. At this time, EPA has only assessed the appropriateness of proposing an allocation for Iofina in

light of the specific circumstances presented by that entity. The Agency is not proposing, nor creating a mechanism to finalize, production for export allowances for any other entity through this rulemaking. If other producers were to express a similar interest, EPA would consider whether to act in a separate rulemaking under subsection (e)(5), but we emphasize that this action is dependent on facts specific to Iofina, including the relatively small size of Iofina's production and the modest impacts on the overall market for HFCs that will result.

B. How many production for export allowances is EPA proposing to issue to Iofina on an annual basis, and for how many years is EPA proposing to issue these allowances?

EPA is proposing to issue Iofina non-transferrable production for export allowances in the amount of 3,000.0 MTEVe on an annual basis. The Agency arrived at this proposed amount based on an evaluation of a combination of factors including: Iofina's request; supporting information from the company explaining and demonstrating the need for production for export allowances; Iofina's relative market share of production allowances and recent yearly allocations from EPA; recent conferral activity where Iofina is the recipient; and, the general effect to other producers of issuing Iofina production for export allowances in the proposed amount.

The production cap for calendar year 2024 through 2028 (the current phasedown step) is 229,521,263 MTEVe and the production cap for calendar year 2029 through 2033 (the next phasedown step) is 114,760,632 MTEVe. The proposed number of production for export allowances the Agency would issue Iofina would be approximately 0.001 percent of the overall production cap for 2026 through 2028 and 0.003 percent for 2029 and 2030.³⁶ Accordingly, the Agency does not envision any shortage of production allowances for these years as a result of the proposal to issue Iofina 3,000.0 MTEVe of production for export allowances. In essence, the proposed 3,000.0 MTEVe of production for export allowances issued to Iofina would not materially affect any other domestic producer even in light of the next phasedown step.

Consistent with the provisions in subsection (e)(5)(A)(i), EPA is proposing that if finalized, Iofina would be issued

³⁵ See EPA HFC Data Hub at <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub>.

³⁶ Percent = (Number of Production of Allowances Issued)/(Production Cap)*100.

production for export allowances on an annual basis for a five-year period between 2026 through 2030.

C. Would Iofina need to expend consumption allowances for materials produced with production for export allowances and subsequently exported?

Subsection (e)(5) of the AIM Act allows EPA to “authorize a person to produce” for export if such production would not violate the yearly cap described in subsection (e)(2)(B). To operationalize this statutory requirement, EPA proposes to require that any material produced with production for export allowances must be exported in the same year it was produced. The AIM Act defines “consumption” as the amount of HFCs produced and imported minus the quantity of HFCs exported. Therefore, production of an HFC in a given year would be “netted out” when calculating consumption if that HFC is exported in that same year. Because HFCs produced with production for export allowances would be exported in the same year and therefore would be “netted out” when evaluating the United States’ calculated yearly consumption, EPA is proposing that when Iofina produces for export using this specific category of allowances, it is not required to expend consumption allowances in an equivalent amount. Relatedly, EPA is also proposing that Iofina’s materials produced with production for export allowances are not eligible for additional consumption allowances through the RACA provisions in 40 CFR 84.17.

D. How will this process affect the issuance of other types of allowances?

Under 40 CFR part 84, subpart A, EPA first issues ASAs. Because the Agency is proposing an annual finite number of production for export allowances for Iofina, EPA proposes to issue these non-transferrable allowances immediately after ASAs are issued. As a result, EPA is proposing small modifications to 40 CFR 84.9 to reflect that the number of available general pool production allowances is the difference between the yearly production cap and the sum of ASAs issued and the number of production for export allowances. It should be noted that because production for export allowances is a separate category from general pool production allowances, Iofina would be eligible for both of these types of allowances beginning in 2026 through 2030 if the production for export allowance provisions are finalized. EPA is not proposing any changes to how general pool consumption allowances

are issued on an annual basis and is neither revising nor reopening the methodology codified in 40 CFR 84.11.

E. What are the proposed recordkeeping and reporting requirements for production for export allowances?

In order to maintain overall stringency while allowing for the flexibilities in the AIM Act described in this general information section of the preamble, EPA is proposing that Iofina comply with recordkeeping and reporting requirements in addition to what is already required of the entity as a domestic producer under 40 CFR 84.31(a) and (b) and as an exporter under 40 CFR 84.31(d).

1. Annual Certifications

EPA is proposing that Iofina secure signed certifications by a responsible corporate officer from their overseas application-specific customers attesting that any regulated HFCs produced using production for export allowances will only be used in application-specific uses (*i.e.*, only for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector). EPA is proposing that Iofina must provide such written and signed certification for each of their overseas customers, accompanied by a description of how the foreign use aligns with the definitions in 40 CFR 84.13(a) and 40 CFR 84.3. If the regulated HFCs produced by Iofina using product for export allowances are to be held at an intermediary prior to receipt by the semiconductor manufacturer, the intermediary must also submit the same certification. As part of the yearly written certification, EPA is proposing that the name and address of the foreign entity, and the contact person’s name, email address, and phone number are included. Further, EPA is proposing that Iofina must provide copies of these signed certifications with its end of year fourth quarter report due February 14 (*i.e.*, certifications for calendar year 1 are due on February 14 of year 2).

2. Quarterly Export and Inventory Reporting

In addition to submitting the quarterly exporter reports currently required under 40 CFR 84.31(a) and (b), the Agency is proposing that Iofina must, as part of these quarterly exporter reports, document the amounts exported that were produced using production for export allowances. Iofina would also be required to document the country to which HFCs were exported. As part of this documentation and to help ensure

that EPA can quickly locate exports of regulated HFCs produced by Iofina, the Agency is proposing that an ITN be provided for each shipment regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN. Additionally, EPA is proposing that Iofina report quarterly no later than 45 days after the applicable quarterly control period on inventory of regulated HFCs produced with production for export allowances so EPA can effectively track their use. Inventory of regulated HFCs produced with production for export allowances must be zero as of December 31 for that calendar year; otherwise, EPA may pursue actions including but not limited to allowance adjustments, *i.e.*, administrative consequences, or enforcement action. All reports described in this section would be subject to EPA’s auditing provisions under 40 CFR 84.33 if finalized as proposed.

3. Recordkeeping

EPA is proposing that Iofina maintains for a period of five years the certifications from all of its customers and any intermediaries attesting that the regulated HFCs they are receiving are only to be used for the etching of semiconductor material or wafers and cleaning of CVD chambers within the semiconductor manufacturing sector. The Agency is also proposing that Iofina maintain for a period of five years records demonstrating that Iofina has conducted extensive due diligence to verify and ensure that the HFCs they sell abroad are only sold to an entity that will use the HFC for an application-specific use and are not going to be diverted for some other use (*e.g.*, destroyed for carbon credits, sold to another entity that will use the HFCs for another end use).

IX. How will EPA handle confidentiality for newly reported information?

Consistent with EPA’s commitment to transparency in program implementation, as well as to proactively encourage compliance, support enforcement of program requirements, and enable third-party engagement to complement EPA’s enforcement efforts, EPA is proposing several ways it intends to release data that would be collected if this proposed rule is finalized as proposed.

EPA has reviewed the data elements that are proposed to be reported under this rulemaking. Based on that review, EPA is proposing certain confidentiality

determinations in advance through this notice and comment rulemaking for individual reported data elements that EPA would be collecting through this rulemaking. This proposal identifies certain information that must be submitted to EPA that may be subject to disclosure to the public without further notice because the Agency proposes to find that the information does not meet the standard for confidential treatment under Exemption 4 of the Freedom of Information Act (FOIA). EPA is also proposing to identify certain other categories of information that would be entitled to confidential treatment. For data elements for which EPA is not making a confidentiality determination in this action, EPA will apply the 40 CFR part 2 process for establishing case-by-case confidentiality determinations. The confidentiality determinations in this proposed action are intended to increase the efficiency with which the Agency responds to FOIA requests and to provide consistency in the treatment of the same or similar information. Establishing these determinations through this rulemaking will provide predictability for both information requesters and entities submitting information to EPA. The confidentiality determinations are also proposed to increase transparency around this program's implementation.

A. Background on Determinations of Whether Information Is Entitled to Treatment as Confidential Information

Exemption 4 of the FOIA exempts from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential” (5 U.S.C. 552(b)(4)). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either: (1) a trade secret, or (2) commercial or financial information that is: (a) obtained from a person, and (b) privileged or confidential.

Generally, when we have information that we intend to disclose publicly that is covered by a claim of confidentiality under FOIA Exemption 4, EPA has a process to make case-by-case or class determinations under 40 CFR part 2 to evaluate whether such information qualifies for confidential treatment under the exemption. 40 CFR 2.205.³⁷ In

this action, EPA is proposing to make categorical confidentiality determinations in advance through this notice and comment rulemaking for some information that must be submitted to EPA under the proposed requirements. If EPA finalizes these determinations, that information could be disclosed to the public without further notice.

The U.S. Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (*Argus Leader*) addresses the meaning of “confidential” within the context of FOIA Exemption 4. The Court held that “[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” *Argus Leader*, 139 S. Ct. at 2366. The Court identified two conditions “that might be required for information communicated to another to be considered confidential.” *Id.* at 2363. Under the first condition, “information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it.” *Id.* (internal citations omitted). The second condition provides that “information might be considered confidential only if the party receiving it provides some assurance that it will remain secret.” *Id.* (internal citations omitted). The Court found that the first condition necessary for information to be considered confidential within the meaning of Exemption 4, but did not address whether the second condition must also be met.

Following the issuance of the Court's opinion in *Argus Leader*, the U.S. Department of Justice (DOJ) issued guidance concerning the confidentiality prong of Exemption 4, articulating “the newly defined contours of Exemption 4” post-*Argus Leader*.³⁸ Where the Government provides an express or implied indication to the submitter prior to or at the time the information is submitted to the Government that the Government would publicly disclose the information, then the submitter

generally cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.³⁹ In this proposed rule, EPA intends to clearly assert that certain information would not be kept confidential and may be disclosed publicly, if it is determined to not be entitled to confidential treatment in the final version of this rulemaking. This assertion aligns with the Supreme Court's decision, and the subsequent DOJ guidance that the government's assurances that a submission will be treated as *not* confidential should dictate the expectations of submitters. If EPA were to finalize these determinations, submitters would be on notice before they submit any information that EPA has determined that the identified information outlined in the memorandum provided in the docket for this action titled *Proposed Confidentiality Determinations for Data Elements in the Proposed Rule*, will not be entitled to confidential treatment upon submission and may be released by the Agency without further notice. As a result, submitters will not have a reasonable expectation that the information will be treated as confidential; rather, they should have the expectation that the information will be disclosed.

As described further below, EPA is proposing to make categorical confidentiality determinations as some of the proposed data elements that would be submitted to EPA contain information that is not entitled to confidential treatment. For data elements not explicitly listed in the document in the docket, EPA will apply the 40 CFR part 2 process for establishing case-by-case confidentiality determinations.

There may be additional reasons not to release information determined to not be entitled to confidential treatment, for example if it is personally identifiable information (PII). The Agency will separately determine whether any data should be withheld from release for reasons other than business confidentiality before data is released. EPA requests comment on the proposed confidentiality determinations.

³⁷ This approach of making categorical determinations for a class of information is a well-established Agency practice. Prior examples of rules where EPA has made such categorical determinations include *Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act* (76

FR 30817) (May 26, 2011); *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards* (88 FR 4296) (January 24, 2023); and *Renewable Fuel Standard (RFS) Program: RFS Annual Rules* (87 FR 39600) (July 1, 2002).

³⁸ “Exemption 4 After the Supreme Court's Ruling in *Food Marketing Institute v. Argus Leader Media* and Accompanying Step-by-Step Guide,” Office of Information Policy, U.S. DOJ, (October 4, 2019), available at <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>.

³⁹ See *id.*; see also “Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential under Exemption 4 of the FOIA,” Office of Information Policy, U.S. DOJ, (updated October 7, 2019), available at <https://www.justice.gov/oip/step-by-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential>.

B. Data Elements Associated With a Petition To Be Listed as an Application That Will Receive Application-Specific Allowances

In light of the statutory requirement in subsection (e)(4)(B)(ii) to make a complete petition available to the public, and consistent with EPA's commitment to transparency in program implementation, EPA has reviewed the data elements EPA has proposed would be required for a petition to be listed as an application that will receive ASAs. Specifically, EPA proposes to not provide confidential treatment to, and may release without further process, all required elements of the petition, except for a subset of the elements for which EPA has proposed that multiple entities could submit information individually to EPA;⁴⁰ and all information submitted to EPA that does not correspond to a required element. The memorandum to the docket lists each individual element of a complete petition, as proposed by EPA, with an accompanying proposed determination on whether that element would be entitled or not to confidential treatment. EPA is proposing that through this rulemaking, entities are put on notice of data release in line with the *Argus Leader* decision. EPA is providing an express indication to all potential petitioners prior to the time information is submitted to EPA that EPA will publicly disclose the information without further process. Therefore, potential future submitters cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4. EPA invites comment on this proposed determination.

C. Data Elements Related to Proposed Revisions to Existing Regulations

To maximize program transparency, EPA is proposing to release several data elements associated with the proposed limited changes to existing regulations, including specific data elements associated with the following proposed regulatory revisions: (1) a pool of set-aside allowances for situations that meet the criteria for unique circumstances related to the propellants in MDIs application; (2) allowing ASA holders to return their allowances voluntarily if they do not intend to use them; and (3)

the "date of purchase" requirement for a RACA. The memorandum to the docket lists each individual element EPA has proposed related to these regulatory revisions with an accompanying proposed determination on whether that element would be entitled or not to confidential treatment. EPA is proposing that through this rulemaking notice, entities are put on notice of data release in line with the *Argus Leader* decision. EPA is providing an express indication to all entities prior to the time information is submitted to EPA that EPA will publicly disclose the information without further process. Therefore, potential future submitters cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4. EPA invites comment on this proposed determination.

EPA is proposing to regulatorily determine that certain other information would be entitled to confidential treatment. EPA is proposing that supporting documentation verifying a need to purchase regulated substances in the present calendar year for purposes of the proposed set aside because it is likely to include the type of information that submitters customarily keep private or closely held. EPA is also proposing that data elements associated with the following proposed regulatory revisions would be entitled to confidential treatment: (1) requiring companies provide the total expected amount of HFCs they intend to purchase in the calendar year; (2) new requirements for the conferral of MCMEU allowances; and (3) requiring exporters to report ITNs quarterly. These data elements constitute the type of information that submitters customarily keep private or closely held. Furthermore, in the case of ITNs reported by exporters, it is EPA's understanding that the ITN, as part of the Electronic Export Information (EEI) contained in the Automated Export System (AES), is considered confidential by the Department of Commerce. Additional information on the proposed determinations for specific data elements associated with the proposed regulatory revisions is provided in the memorandum in the docket for this action. EPA invites comments on these proposed confidentiality determinations, including information on whether the listed elements are the type of information customarily kept private or closely held.

D. Data Elements Reported to EPA Related to Production for Export

EPA is proposing to establish a production for export category of allowances as described in Section VIII. If EPA were to finalize the proposal for production for export allowances, EPA is proposing to release several data elements that a production for export allowance holder would be required to submit, including: (1) quantity of allowances expended for each regulated substance; (2) quantity of each regulated substance produced for export; (3) quantity of each regulated substance, produced using production for export allowances, that was exported; (4) quantity of each regulated substance held in inventory at the end of the quarter; and (5) the country to which regulated substances, produced using production for export allowances, were exported. The memorandum to the docket lists each individual element EPA has proposed related to the production for export allowances with an accompanying proposed determination on whether that element would be entitled or not to confidential treatment. EPA is proposing that through this rulemaking, entities are put on notice of data release in line with the *Argus Leader* decision. EPA is providing an express indication to all entities prior to the time information is submitted to EPA that EPA will publicly disclose the information without further process. Therefore, potential future submitters cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4. EPA invites comment on this proposed determination.

EPA is proposing that the ITNs submitted for all exports of regulated substances produced using production for export allowances would be entitled to confidential treatment for the same rationale described earlier in this section for the proposed requirement that exporters report ITNs on a quarterly basis. EPA requests comment on this proposed determination, including comments on why this information may not be entitled to confidential treatment.

EPA is proposing that the signed certifications would be entitled to confidential treatment because it is EPA's understanding that these certifications could have the potential to reveal confidential business relationships (*i.e.*, the relationship between the allowance holder, overseas customer, and any intermediaries). EPA requests comment on this proposed determination, including comments on why this information may not be

⁴⁰For example, EPA is proposing that (1) data on the proportion of the overall cost of the product or system that reflects the cost of regulated substance(s) and (2) historic and projected sales for the product or system would not be treated as confidential business information, as these are important elements for the public to consider when EPA is taking action on a petition for application-specific allowances.

entitled to confidential treatment. Specifically, EPA requests comment on whether the existence of a business relationship between an HFC producer and customer is information that is customarily closely held.

X. What are the costs and benefits of this action?

The changes proposed in this proposed rule would not result in any significant changes to the phasedown program as a whole, and thus do not fundamentally change the assumptions made in the Allocation Framework Rule RIA and subsequent RIA addenda. The Allocation Framework Rule RIA estimated benefits and costs for the HFC phasedown between 2022 and 2050, including assuming for analytical purposes that the allocation system would continue unchanged for years past the initial period (*i.e.*, for 2024 and beyond). This action would not change the total number of allowances issued each year or the associated environmental impacts. Further, the 2023 Technology Transitions Rule RIA Addendum quantified the costs and benefits associated with the transitions necessary for compliance based on the sector- and subsector-specific restrictions finalized in that rule. Given that the 2023 Technology Transitions Rule promulgated restrictions for sectors that encompass both defense sprays and SCPPU foams (aerosols and foam blowing sectors, respectively), the compliance costs associated with the proposals described in Section V of this proposed rule to restrict the use of certain HFCs in defense sprays and SCPPU foams have already been accounted for in the 2023 Technology Transitions Rule RIA Addendum. Therefore, EPA is not developing an update to the RIA for this proposed rule; however, given that some elements proposed in this rulemaking could result in incremental impacts for a subset of entities, the Agency did analyze potentially salient costs and

benefits considerations associated with this proposed rulemaking. A summary of this analysis is included below, and additional details are presented in *Discussion of Costs and Benefits for Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances*, which is available in the docket for this action (EPA-HQ-OAR-2024-0196).

This analysis is intended to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders. The analysis does not form a basis or rationale for any of the actions EPA is proposing in this rulemaking.

For entities in applications for which EPA is co-proposing an option to not renew eligibility for ASAs, the biggest drivers for any costs would be no longer being exempted from the restrictions promulgated under the Technology Transitions Program. However, entities within those applications that currently receive ASAs would also avoid recordkeeping and reporting costs associated with being an ASA holder because they would no longer receive ASAs and thereby no longer need to comply with related recordkeeping and reporting provisions, resulting in burden relief.

General pool allowance holders may receive benefits in the form of additional allowances if EPA finalized one or more applications no longer being eligible for ASAs. However, EPA anticipates that the number of additional allowances would be insignificant, totaling well under one percent of consumption allowances in a given year. For example, the number of allowances allocated in calendar year 2024 to the two applications for which EPA is co-proposing an option to not renew is equivalent to 0.1 percent of calendar year 2024 consumption allowances. In addition, as these marginal benefits constitute a transfer from one group to another and do not

change the total number of allowances issued, there is no net societal impact.

EPA estimates that there may be costs related to the proposed requirements for ASA petitions and revisions to existing regulations. For example, in a scenario in which EPA does not renew the defense sprays and SCPPU foam for marine and trailer uses applications, the estimated costs of this proposed rule would be \$19,052 in one-time costs and \$54,310 in annual costs. More discussion of this scenario is included in the costs and benefits memo available in the docket that is referenced above. Other than these costs, EPA has not identified additional costs or benefits beyond those estimated in the Allocation Framework Rule RIA and subsequent RIA addenda.

XI. Statutory and Executive Order Review

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

This action is a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an economic analysis of the potential impacts associated with this action. This analysis, “*Discussion of Costs and Benefits for Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances*,” is available in the docket for this action (EPA-HQ-OAR-2024-0196) and is briefly summarized in Section X of this preamble, titled, “What are the costs and benefits of this action?”. The high end costs of this proposed rule are estimated in the table below:

TABLE 3—SUMMARY OF COSTS IN SCENARIO IN WHICH DEFENSE SPRAYS AND SCPPU FOAM FOR MARINE AND TRAILER USES APPLICATIONS ARE NOT RENEWED

Activity	One-time costs	Annual costs
Application-specific allowance recordkeeping and reporting burden relief for entities no longer eligible for ASAs .....	.....	\$(189,728)
Technology Transitions recordkeeping and reporting burden for entities no longer eligible for ASAs	19,052	221,462
Petitions requesting eligibility for ASAs .....	.....	12,758
Other regulatory revisions .....	.....	9,818
Total	19,052	54,310

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2685.05. You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

Subsection (d)(1)(A) of the AIM Act specifies that on a periodic basis, but not less than annually, each person that, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to EPA a report that describes, as applicable, the quantity of the regulated substance that the person: produced, imported, and exported; reclaimed; destroyed by a technology approved by the Administrator; used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or, used as a process agent. EPA collects such data regularly to support implementation of the AIM Act's HFC phasedown provisions. EPA requires quarterly reporting to ensure that annual production and consumption limits are not exceeded. It is also needed for EPA to be able to review allowance transfer requests, of which remaining allowances is a major component of EPA's review. In addition, EPA collects information to calculate allowances, to track the movement of HFCs through commerce, and to require auditing. Collecting these data elements allows EPA to confirm that the entity has not exceeded its allowed level of production and consumption and that the aggregated annual quantity of production and consumption in the United States does not exceed the cap established in the AIM Act. As described above in this preamble, EPA is proposing a procedural process for submitting a petition to designate a new application as eligible for priority access to allowances; reporting and recordkeeping requirements relevant for narrow revisions to the methodology used to allocate allowances to ASA holders for calendar years 2026 and beyond; and other limited reporting and recordkeeping revisions, such as for the proposal to authorize an entity to produce regulated substances for export.

All information sent by the submitter electronically is transmitted securely to protect information that is CBI or claimed as CBI consistent with the confidentiality determinations made in the Allocation Framework Rule and the proposed confidentiality determinations described in Section IX of this

preamble, if finalized as proposed. The reporting tool guides the user through the process of submitting such data. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements.

Respondents/affected entities: Respondents and affected entities will be individuals or entities that produce, import, export, reclaim, recycle for use as a fire suppressant, distribute, destroy, transform, use HFCs as a process agent, or produce for export, certain HFCs that are defined as a regulated substance under the AIM Act. Respondents and affected entities will also be any entity issued or conferred ASAs.

Respondent's obligation to respond: Mandatory (AIM Act).

Estimated number of respondents: 342.

Frequency of response: Quarterly, biannual, annual, and as needed depending on the nature of the report.

Total estimated burden: 36,248 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$5,486,236 (per year), includes \$1,038,450 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than October 16, 2024.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action are entities that hold HFC allowance allocations (including production, consumption, and application-specific allowances),

entities that applied for but did not receive set-aside allowances in 2022, entities that previously imported HFCs between 2017 and 2019 but did not receive 2022 allowance allocations, and entities that recover and reprocess HFCs. Given there are co-proposals for two applications, EPA conducted this preliminary screening analysis based on the pathway that could lead to the highest cost burden on small entities; therefore, this analysis assumes for analytical purposes that the defense sprays and SCPPU foam for marine and trailer uses applications will not be renewed. The Agency has determined that four of the 276 affected small businesses—or 1.4 percent of all affected small businesses—could incur costs in excess of one percent of annual sales, and three of those four small businesses—or 1.1 percent of all affected small businesses—could incur costs in excess of 3 percent of annual sales. The four entities that could incur costs in excess of one percent of annual sales are all entities that currently receive ASAs in the defense sprays and SCPPU foam for marine and trailer uses applications. These costs are primarily driven by these entities no longer being exempted from Technology Transition Program restrictions. Further details of this analysis are presented in *Economic Impact Screening Analysis for Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances*, which is available in the docket for this action (EPA-HQ-OAR-2024-0196).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments and the costs involved in this action are estimated not to exceed \$183 million in 2023\$ (\$100 million in 1995\$ adjusted for inflation using the GDP implicit price deflator) or more in any one year.

E. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. EPA is not aware of Tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, EPA also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

EPA periodically updates Tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and has shared information on this rulemaking through this and other fora.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This proposed rule does not change the HFC phasedown schedule.

Although this action does not concern human health or environmental conditions, the EPA identified and addressed environmental justice concerns associated with the HFC phasedown within the Allocation Framework Rule (86 FR 55116, October 5, 2021) and the 2024 Allocation Rule (88 FR 46836, July 20, 2023). In these rulemakings, EPA identified and addressed environmental justice concerns by assessing available information to analyze baseline human health or environmental conditions, conducting updated analyses based on more recently available data, and providing meaningful participation opportunities for communities with environmental justice concerns. EPA carefully evaluated available information on HFC production facilities and the characteristics of nearby communities. Based on EPA's analysis, EPA found evidence of environmental justice concerns near HFC production facilities from cumulative exposure to existing environmental hazards in these communities.

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 84 as follows:

PART 84 PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

■ 2. Amend § 84.3 by adding the definitions "Healthcare system need", "Responsible corporate officer", and "Responsible official" in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Healthcare system need means circumstances where an increase in demand for MDIs used to treat asthma, chronic obstructive pulmonary disease, and other respiratory diseases may occur because of a change in market conditions that otherwise would not be included in calculated rates of growth.

* * * * *

Responsible corporate officer means a person who is authorized by the regulated entity to make representations on behalf of, or obligate the company as ultimately responsible for, any activity regulated under 40 CFR part 84, subpart A.

Responsible official means a person who is authorized by the regulated entity to make representations on behalf of, or obligate the company as ultimately responsible for, any activity regulated under 40 CFR part 84, subpart A.

* * * * *

■ 3. Amend § 84.5 by:

■ a. In paragraph (a)(1), adding "unexpended production for export allowances," after the phrase "unexpended production allowances and consumption allowances".

■ b. Revising paragraph (c)(2).

■ c. In paragraph (d), adding "production for export," after "All production, consumption," and adding "production for export," after the phrase "confer a production, consumption,".

■ d. Revising paragraph (f).

■ e. Adding paragraph (k).

The revisions and additions read as follows:

§ 84.5 Prohibitions relating to regulated substances.

* * * * *

(c) * * *

(2) No person may use a regulated substance produced or imported by expending application-specific allowances for any purpose other than those for which the application-specific allowance was allocated, and as set forth in this paragraph (c). Application-specific allowances are apportioned to a person under §§ 84.13 and 84.15 for the production or import of regulated substances solely for the individual application listed on the allowance.

* * * * *

(f) *Sale and distribution.* No person may sell or distribute, or offer for sale or distribution, any regulated substance

that was produced or imported in violation of paragraphs (a) through (d) of this section, except:

(1) for such actions needed to re-export the regulated substance; or

(2) if the regulated substance was purchased at a government auction authorized by the United States Customs and Border Protection and consumption allowances were expended in the requisite quantity to cover the regulated substances at issue.

Every kilogram of a regulated substance sold or distributed, or offered for sale or distribution, in contravention of this paragraph constitutes a separate violation of this subpart. Sale or distribution, or offer for sale or distribution, of less than one kilogram of regulated substance in contravention of this paragraph constitutes a separate violation of this subpart.

* * * * *

(k) *Production for export allowances.*

No person may use a regulated substance produced by expending production for export allowances for any purpose other than those for which the production for export allowance was allocated, aligning with the applications as listed in § 84.13(a).

■ 4. Amend § 84.9 by:

■ a. In paragraph (b)(3) adding “and 3,000.0 MTEVe allowances to be allocated pursuant to § 84.18,” after “§ 84.13”.

■ b. Redesignating paragraph (c) as paragraph (d).

■ c. Adding new paragraph (c).

The addition reads as follows:

§ 84.9 Allocation of calendar-year production allowances.

* * * * *

(c) Starting with the allocation of 2026 calendar year allowances, the relevant Agency official will withhold ten percent of production allowances otherwise calculated under paragraph (b) of this section from any entity that produced regulated substances in any calendar year 2011 through 2019 for a separate entity that is being issued application-specific allowances in accordance with § 84.13, except for mission-critical military end uses. If there are remaining production allowances after distribution from the set-aside under § 84.15, the relevant agency official will distribute such allowances to the entity from which they were withheld.

* * * * *

■ 5. Amend § 84.11 by:

■ a. Redesignating the second paragraph (c) as paragraph (e).

■ b. Redesignating paragraph (c) as paragraph (d).

■ c. Adding new paragraph (c).

The addition reads as follows:

§ 84.11 Allocation of calendar-year consumption allowances.

* * * * *

(c) Starting with the allocation of 2026 calendar year allowances, the relevant Agency official will withhold ten percent of consumption allowances otherwise calculated under paragraph (b) of this section from any entity that imported regulated substances in any calendar year 2011 through 2019 for a separate entity that is being issued application-specific allowances in accordance with § 84.13, except for mission-critical military end uses. If there are remaining consumption allowances after distribution from the set-aside under § 84.15, the relevant agency official will distribute such allowances to the entity from which they were withheld.

* * * * *

■ 6. Amend § 84.13 by:

■ a. In paragraph (a), removing “2022, 2023, 2024, and 2025” and adding in their place “as designated”.

■ b. In paragraph (a)(1), adding “for calendar years 2022–2030” after the phrase “metered dose inhalers”.

■ c. In paragraph (a)(2), adding “for calendar years 2022–2025” after the phrase “defense sprays”.

■ d. In paragraph (a)(3), adding “for calendar years 2022–2030” after the phrase “trailer use”.

■ e. In paragraph (a)(4), adding “for calendar years 2022–2030” after the phrase “semiconductor manufacturing sector”.

■ f. In paragraph (a)(5), adding “for calendar years 2022–2030” after the phrase “end uses”.

■ g. In paragraph (a)(6), adding “for calendar years 2022–2030” after the phrase “fire suppression”.

■ h. In paragraph (b)(1), adding “, including supporting documentation that verifies this need” after the phrase “this section”.

■ i. In paragraph (b)(1)(ii) remove “or” after the phrase “facility or facilities;”.

■ j. In paragraph (b)(1)(iii), removing “A global pandemic or other public health emergency that increases” and adding in their place “A global pandemic, other public health emergency, or other healthcare system needs related to increased” and removing “inhalers.” and adding in its place “inhalers;”.

■ k. Adding paragraphs (b)(1)(iv) and (v).

■ l. Adding paragraph (b)(2).

■ m. Redesignating paragraph (c)(1) as paragraph (c)(7).

■ n. Adding new paragraph (c)(1).

■ o. Adding paragraphs (c)(4) through (6).

■ p. Revising newly redesignated paragraph (c)(7) introductory text.

■ q. Removing paragraph (e).

■ r. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g), respectively.

■ s. Adding new paragraph (h).

The revisions and additions read as follows:

§ 84.13 Allocation of application-specific allowances.

* * * * *

(b) * * *

(1) * * *

(iv) Economic disruption outside the immediate control of the applicant; or

(v) Buildup of a stockpile of a specific regulated substance in the event of a production cessation. Requests for this unique circumstances must include: a letter from the applicant’s supplier signed by a responsible corporate officer stating that the supplier is ceasing all production of the regulated substance at issue within three years; certification that the applicant has regulatory requirements beyond this part that limit ability to switch suppliers or there are no other suppliers that could meet their needs; and evidence that the applicant has a restricted HFC supply chain.

(2) Entities must provide an estimate of the total quantity of regulated substances they expect to purchase in the following calendar year based on their expected eligibility for allowances.

(c) * * *

(1) Accounting for verified changes in inventory in calculating growth rates and purchase amounts, except:

(i) for applications for mission-critical military end uses; and

(ii) if the applying entity provides a rationale deemed acceptable by the relevant agency official as to why inventory buildup should not be accounted for;

* * * * *

(4) Subtracting out quantities reported under § 84.31(h)(1)(x) in calculating growth rates and purchase amounts;

(5) Allocating allowances equivalent to the highest verified purchase amount measured in exchange value equivalent from the prior three years for entities that meet any of the following criteria:

(i) entity purchased less than 100 kilograms of regulated substances in at least one of the last three years, and the average growth rate of use for the company over the past three years calculated under paragraph (7)(i) is equal to or greater than 200 percent;

(ii) entity had zero purchases in one of the last three years for reasons other than newly using regulated substances; or

(iii) entity purchased equal to or less than 100 kilograms of regulated

substances in each of the past three years;

(6) For the application of structural composite preformed polyurethane foam for marine use and trailer use, utilizing the exchange value for HFC-152a in calculating the allowance allocation, regardless of what regulated substance was used by an entity;

(7) For all other entities, multiplying the use of regulated substances by the company in the specific application in the prior year by the higher of:

* * * * *

(h) Any entity receiving an allocation of allowances pursuant to this section may voluntarily choose to return any quantity of allowances to EPA up to, and including, June 30 of the calendar year in which the allowances can be expended. If any allowances are so returned, those allowances will be distributed to the persons who meet the criteria listed in §§ 84.9 and 84.11 proportionate to entities' market share as calculated in §§ 84.9(b)(2) and 84.11(b)(5).

■ 7. Add § 84.14 to read as follows:

§ 84.14 Petition for designation of an application as eligible for application-specific allowances.

(a) Petitions filed pursuant to 42 U.S.C. 7675(e)(4)(B)(ii) must include:

(1) A description of the application, including an explanation of what the application is, what purpose or function it achieves, and what populations or commercial products benefit from the application;

(2) A list of regulated substance(s) and description of their use in the application and an explanation as to why regulated substances are required in the application;

(3) Evidence that no safe or technically achievable substitute is or is expected to be available, and that the petitioner has conducted research to evaluate substitutes for the regulated substance(s);

(4) Evidence that supply of the regulated substance(s) used in the application is insufficient to accommodate the application;

(5) A signed and notarized certification from a responsible corporate officer at the requesting entity that the application cannot use recovered and reprocessed regulated substance in conjunction with or in place of virgin regulated substance, either due to demonstrated lack of technical achievability or insufficient supply, and an explanation and evidence documenting why recovered and reprocessed regulated substance cannot be used for the application;

(6) Total quantity (in kilograms) of all regulated substances acquired by each entity submitting the petition for the application specified in the petition in each of the previous three years, including records documenting that quantity;

(7) The name of the entity or entities supplying regulated substances and contact information for those suppliers over the past three years;

(8) Total quantity (in kilograms) of each regulated substance held in inventory by each entity submitting the petition as of the date the petition is submitted;

(9) An estimate of the total quantity of regulated substances the petitioner expects to purchase in the first year it would be eligible for ASAs;

(10) Data on the proportion of the overall cost of the product or system that reflects the cost of regulated substances for each entity;

(11) Historic and projected sales for the product or system for each entity;

(12) Evidence of research into design changes to decrease the amount of regulated substance used in the product or system;

(13) An explanation regarding whether the use of the regulated substance(s) is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural and intellectual aspects);

(14) An explanation regarding steps taken to minimize the use of the regulated substance and any associated emission of the HFC(s); and

(15) Information on regulatory restrictions related to possible alternatives and substitutes.

(b) If the petition does not include the required information listed in paragraph (a), the petition will be deemed incomplete, and EPA will notify the entity submitting the petition.

(c) In the event that an application becomes eligible to receive application-specific allowances:

(1) EPA will allocate allowances to entities in a new application in accordance with § 84.13; and

(2) A new application would be eligible to receive application-specific allowances for no longer than the latest calendar year included in § 84.13(a).

■ 8. Amend § 84.15 by adding paragraph (h) to read as follows:

§ 84.15 Set-aside of application-specific allowances, production allowances, and consumption allowances.

* * * * *

(h) Consumption and production allowances from § 84.9(c) and § 84.11(c) are available in the form of application-specific allowances to entities that

request them no later than April 30 of the calendar year in which the allowances may be expended that:

(1) qualify for application-specific allowances under § 84.13;

(2) provide supporting documentation that verify a need to purchase regulated substances in the present calendar year beyond what is reflected by the rates of growth calculated in § 84.13(c)(1);

(3) are facing a situation that qualifies as a unique circumstance as defined in § 84.13(b)(iii); and

(4) demonstrate to the satisfaction of the relevant agency official that the situation described in paragraph (3) was unknowable at the time the entity made its request for application-specific allowances pursuant to § 84.13(b).

■ 9. Amend § 84.17 by:

■ a. In the introductory text, adding the language “, except for the export of regulated substances produced with a production for export allowance” to the end of the first sentence.

■ b. Revising paragraph (a)(5).

The revision reads as follows:

§ 84.17 Availability of additional consumption allowances.

* * * * *

(a) * * *

(5) The source of the regulated substances and whether the date purchased was before or after January 1, 2022;

* * * * *

■ 10. Add § 84.18 to read as follows:

§ 84.18 Authorization of production for export allowances.

(a) EPA will allocate 3,000.0 MTEVe of production for export allowances to Iofina Chemical by October 1 of the calendar year prior to the year in which the allowances may be used for calendar years 2026, 2027, 2028, 2029, and 2030.

(b) Production for export allowances cannot be transferred.

(c) Any regulated substances produced with production for export allowances must be exported in the same calendar year it was produced.

■ 11. Amend § 84.31 by:

■ a. In the introductory text of paragraph (a), removing the phrase “in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act”.

■ b. Redesignating paragraphs (d)(1)(vii) and (d)(1)(viii) as paragraphs (d)(1)(viii) and (d)(1)(ix), respectively.

■ c. Adding new paragraph (d)(1)(vii).

■ d. In paragraph (h)(1)(i), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the word “months”.

■ e. In paragraph (h)(1)(ii), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the word “months”.

- f. In paragraph (h)(1)(iii), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the parenthetical “(i.e., from the open market)”.
 - g. In paragraph (h)(1)(iv), adding “, including a copy of inventory records documenting that quantity;” after the word “use”.
 - h. In paragraph (h)(1)(viii), removing the last “and” after the phrase “additional need”.
 - i. In paragraph (h)(1)(ix), removing “allowances.” and adding in its place “allowances; and”.
 - j. Adding paragraph (h)(1)(x).
 - k. In paragraph (h)(2)(iv), adding “, including a copy of inventory records documenting that quantity;” after the phrase “current year”.
 - l. In the introductory text of paragraph (h)(4), removing “, except for the conferral of allowances for mission-critical military end uses.”.
 - m. In paragraph (h)(7)(i), removing “annual” and adding in its place “biannual”.
 - n. Redesignating paragraphs (h)(7)(iii) through (h)(7)(vi) as paragraphs (h)(7)(iv) through (h)(7)(vii), respectively.
 - o. Adding new paragraph (h)(7)(iii).
 - p. Redesignating paragraph (l) as paragraph (n).
 - q. Adding new paragraphs (l) and (m).
- The revision and additions read as follows:

§ 84.31 Recordkeeping and reporting.

- * * * *
- (d) * * *
- (1) * * *
- (vii) Internal Transaction Numbers for all shipments, except shipments where an exemption from the requirements for the filing of Electronic Export Information (EEI) is provided in 15 CFR part 30 Subpart D;
- * * * *
- (h) * * *
- (1) * * *
- (x) If allowances are allocated for a unique circumstance under § 84.13(b)(1)(v), the quantity (in kilograms) of each regulated substance purchased with the intent to build inventory during the prior six-month period, including a copy of records documenting that quantity.
- * * * *
- (7) * * *
- (iii) A copy of confirmation notices when conferring allowances for application-specific use;
- * * * *
- (l) *Holders of production for export allowances.* Any person allocated production for export allowances must

comply with the following recordkeeping and reporting requirements:

- (1) *Quarterly Reporting.* Within 45 days after the end of each quarter, each holder of production for export allowances must submit to the relevant Agency official a report containing the following information:
- (i) The quantity (in exchange value equivalent) of production for export allowances expended for each regulated substance and the quantity (in kilograms) of each regulated substance produced for export;
 - (ii) The quantity (in kilograms) of each regulated substance produced using production for export allowances that was exported;
 - (iii) The quantity (in kilograms) of each regulated substance produced with production for export allowances held in inventory at the end of the quarter;
 - (iv) Internal Transaction Numbers for all exports of regulated substances produced with production for export allowances;
 - (v) The country or countries to which regulated substances produced using production for export allowances were exported.
- (2) *Annual Reporting.* Within 45 days after the end of the fourth quarter, each holder of production for export allowances must submit to the relevant Agency official a report containing the following information:
- (i) Signed certifications by a responsible corporate officer from all foreign customers and supply intermediaries attesting that any regulated substances produced using production for export allowances will only be used in an application as listed in § 84.13(a). Each certification must include the name and address of the foreign entity, and a contact person's name, email address, and phone number;
 - (ii) A description of how the use identified in the signed certifications provided pursuant to paragraph (i) aligns with the applications as listed in § 84.13(a).
- (3) *Recordkeeping.* Entities who receive production for export allowances must maintain the following records for three years:
- (i) A copy of all certifications reported pursuant to paragraph (2)(i); and
 - (ii) Records demonstrating due diligence undertaken to verify and ensure that all regulated substances produced with production for export allowances and exported are being used in an application as listed in § 84.13(a).
- (m) *Purchasers of HFCs at a government auction.* Any entity purchasing regulated substances at a

government auction authorized by the United States Customs and Border Protection must report such purchase as if they were an import consistent with the applicable provisions under this section, except for the following adjustments.

(1) *Quarterly reporting.* The date that filing for that entry was accepted by a United States Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface, must be reported as the date on which the regulated substances were imported for purposes of paragraph (c)(1)(v). Unless otherwise unavailable, all requirements of paragraph (c)(1) must be reported. If a data element is unavailable, the auction purchaser must contact EPA and state that fact in writing by the time they make their filed report.

(2) *Recordkeeping.* In addition to the records specified in paragraph (c)(2), the auction purchaser must maintain records of the auction purchase, including the accepted bid, confirmation of payment, certification by the entity that they expended allowances, container composition testing to verify the regulated substances contained within the cylinder, and all other final documentation of the auction purchase. Unless otherwise unavailable, all requirements of paragraph (c)(2) must be met. If a data element is unavailable, the auction purchaser must contact EPA and state that fact in writing by the time they make their filed report.

(3) *Advance notification.* The auction purchaser must report the information specified in paragraph (c)(7) prior to the HFCs entering U.S. commerce. The requirement in paragraph (c)(7)(xvi) does not apply if a certificate of analysis is not available at the time of submitting the information in paragraph (c)(7). The entity must complete all required sampling and testing required in this subpart prior to sale in U.S. commerce and maintain such records consistent with 84.31.

* * * *

■ 12. Amend § 84.54 by revising paragraph (a)(16)(i)(O) and adding paragraph (a)(16)(i)(P) to read as follows:

§ 84.54 Restrictions on the use of hydrofluorocarbons.

- (a) * * *
- (16) * * *
- (i) * * *
- (O) Products for removing bandage adhesives from skin; and
- (P) Defense sprays as defined at § 84.3.

* * * *

■ 13. Amend § 84.60 by adding paragraphs (a)(7) and (b)(3) to read as follows:

§ 84.60 Recordkeeping and reporting.

(a) * * *

(7) Effective [DATE], this paragraph shall apply to defense sprays as defined at § 84.3 and structural composite preformed polyurethane foam as defined at § 84.3.

(b) * * *

(3) Effective [DATE], this paragraph shall apply to defense sprays as defined at § 84.3 and structural composite preformed polyurethane foam as defined at § 84.3.

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