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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

[Docket No.: RHS–23–MFH–0013]

RIN 0575–AD36

Updates to the Off-Farm Labor Housing (Off-FLH), Loan and Grant Rates and Terms; Clarification of Grant Agreement Terms; Announcement of Enforcement Date

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule; announcement of enforcement date.

SUMMARY: On October 25, 2024, Rural Development's Multifamily Housing (MFH or Agency), an Agency of the United States Department of Agriculture (USDA), published a final rule. The final rule amended the current regulation for the Off-Farm Labor Housing (Off-FLH) program to clarify the grant agreement term and adopted the period of performance as required by Federal award information requirements. The changes clarified for applicants and grantees their obligations and requirements as Federal award recipients. The effective date set out in the preamble of the final rule was October 25, 2024 (the date the final rule published in the **Federal Register**). The effective date should have been November 25, 2024 (30 days after the final rule published in the **Federal Register**). This document sets November 25, 2024, as the enforcement date for the amendments in the October 25, 2024, final rule.

DATES: The enforcement date for the amendments to 7 CFR 3560.5668 in the final rule published at 89 FR 85035 on October 25, 2024, is November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Christa Lindsey, Finance and Loan Analyst, United States Department of Agriculture Rural Housing Service,

Multifamily Housing Production and Preservation Division; telephone number: (352) 538–5747; email address: mfh.programsupport@usda.gov.

SUPPLEMENTARY INFORMATION: On October 25, 2024, RHS published a final rule amending 7 CFR 3560.5668. RHS incorrectly established the effective date as October 25, 2024. The intention was for the final rule to become effective on November 25, 2024. Because the amendments in the rule were incorporated into the CFR on October 25, 2024, RHS is announcing in this document that enforcement of, and compliance with, the amended regulations is November 25, 2024.

Joaquin Altoro,

Administrator, Rural Housing Services.

[FR Doc. 2024–26638 Filed 11–14–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

34 CFR Part 685

[Docket ID ED–2024–OPE–0135]

RIN 1840–AD97

Income Contingent Repayment Plan Options

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Education (Department) issues this interim final rule (IFR) to amend the regulations governing income contingent repayment (ICR) plans available to Federal student loan borrowers to make certain that the Department meets its statutory obligation under the Higher Education Act of 1965, as amended, (HEA) to offer borrowers access to an income contingent repayment plan. The scope of this rule is narrow. It just revises the end date for most borrowers to enroll in ICR or Pay as You Earn plans from July 1, 2024, to July 1, 2027. This time-limited change to eligibility restrictions that went into effect on July 1, 2024, will allow the Department to meet its statutory obligations while it undertakes the necessary administrative changes to make its repayment plans that would otherwise be available for borrowers compliant with the terms of an injunction from the U.S. Court of

Appeals for the Eighth Circuit (Eighth Circuit).

DATES:

Effective date: These regulations are effective on July 1, 2026.

Implementation date: For the implementation date of these regulatory changes, see the *Implementation Date of These Regulations* section of this document.

Comments due date: We must receive your comments on or before December 16, 2024.

ADDRESSES: For more information regarding submission of comments, please see **SUPPLEMENTARY INFORMATION**. Comments must be submitted via the Federal eRulemaking Portal at [Regulations.gov](https://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [Regulations.gov](https://www.regulations.gov), please email the Help Desk at regulationshelpdesk@gsa.gov or contact by phone at 866–498–2945.

Federal eRulemaking Portal: Please go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.”

A summary of the rule is available at <https://www.regulations.gov/docket/ED-2024-OPE-0135>.

FOR FURTHER INFORMATION CONTACT: For further information contact Tamy Abernathy, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202. Telephone: (202) 245–4595. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Implementation Date of These Regulations: These regulations are effective on July 1, 2026. Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier, as well as the conditions for early implementation.

The Secretary is exercising the authority under section 482(c) of the HEA to designate the regulatory changes to 34 CFR part 685 included in this document for early implementation effective on December 16, 2024, for the reasons set forth in the *Background* and *Need for Regulatory Action* sections of this document. This date reflects when the Department anticipates being ready to process borrower applications for these plans.

Invitation to Comment: We invite you to submit comments regarding this IFR. For your comments to have maximum effect in developing the final regulations, we urge you to clearly identify the specific section of the regulations that each of your comments addresses. The Department will not accept comments submitted after the comment period closes. Please submit your comments only once so that we do not receive duplicate copies.

The following tips are meant to help you prepare your comments and provide a basis for the Department to respond to issues raised in your comments in the final regulations:

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and subsections of the regulations throughout your comments, particularly in any headings that are used to organize your submission.
- Explain why you agree or disagree with the regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences.
- Where you disagree with the regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.
- Do not include personally identifiable information (PII) such as Social Security numbers or loan account numbers for yourself or for others in your submission. Should you include any PII in your comment, such information may be posted publicly.
- Do not include any information that directly identifies or could identify other individuals or that permits readers to identify other individuals. Your comment may not be posted publicly if it includes PII about other individuals.

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Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department may not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *Regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third-party individual. If your comment refers to a third-party individual, please refer to the third-party individual anonymously to reduce the chance that information in your comment could be linked to the third party. For example, "a former student with a graduate level degree" does not provide information that identifies a third-party individual, as opposed to "my sister, Jane Doe, had this experience while attending University X," which does provide enough information to identify a specific third-party individual. For privacy reasons, the Department reserves the right to not make available on *Regulations.gov* any information in comments that identifies other individuals, includes information that would allow readers to identify other individuals, or includes threats of harm to another person or to oneself.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. A well-supported comment is often more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of this IFR, specifically the

regulatory provisions in § 685.209(c)(4) and (5), the *Regulatory Impact Analysis*, and the *Paperwork Reduction Act* sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that are computer-generated. Comments containing the promotion of commercial services or products, and spam will be removed.

We may not address comments outside of the scope of this IFR. Generally, comments that are outside of the scope of this IFR are comments that do not discuss the content or impact of the rule or the Department's evidence or reasons for this IFR. For instance, the Department is not changing the terms of the Income Based Repayment (IBR) plan, so we would not respond to a comment exclusively about the terms of IBR because it is outside the scope of these regulations.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the IFR.

Comments containing personal threats will not be posted to *Regulations.gov* and may be referred to the appropriate authorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about this IFR by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

In this interim final rule, the Department uses "income contingent repayment plans" to refer to repayment plans promulgated by regulation pursuant to the statutory requirement to create an opportunity for borrowers to

pursue income contingent repayment. This includes the plan known as “ICR,” as well as Pay As You Earn (PAYE), Revised Pay As You Earn (REPAYE), and the Saving on a Valuable Education (SAVE) plans.

Section 455(d)(1) of the HEA requires the Secretary of Education (Secretary) to offer Direct Loan borrowers a variety of student loan repayment plans. This includes an “income contingent repayment plan,” under which a borrower makes payments “based on the borrower’s income” for “an extended period of time prescribed by the Secretary, not to exceed 25 years.”¹ Until recently, the Department offered three repayment plans in that category: the Income Contingent Repayment (ICR) plan, the Pay As You Earn (PAYE) plan, and the Revised Pay As You Earn plan, which we refer to as the “2015 REPAYE plan” in this IFR. Separately, the Department offers an income-based repayment (IBR) plan created under section 493C of the HEA. The IBR plan has slightly different terms and conditions for borrowers depending on whether they first borrowed on or after July 1, 2014. The pre- and post-2014 versions are referred to as “old IBR” and “new IBR,” respectively.

On May 26, 2021, the Department announced its intent to consider changes to regulations on a range of topics, including income driven repayment (IDR) plans.² As required by the HEA, these changes were considered and developed by a negotiated rulemaking committee. On August 10, 2021, the Department announced the creation of the Affordability and Student Loans Committee to consider changes to IDR plans, among other issues.³ That committee held week-long meetings in October, November, and December 2021. On January 11, 2023, the Department published a notice of proposed rulemaking (NPRM) that proposed a range of changes to IDR plans, including proposals to limit the future eligibility of certain repayment plans created under the income contingent repayment authority because the Department was creating a single plan issued under this authority that would be the best choice for the vast majority of borrowers.⁴ After carefully considering the more than 13,600 public comments⁵ received on the proposed rule, the Department issued a final rule making changes to IDR plans on July 10,

2023.⁶ As noted, one of the goals of the regulatory changes in the IDR final rule was to streamline the income contingent repayment options available to borrowers by offering a repayment option that would be the best choice for the majority of borrowers. Specifically, § 685.209(c)(4)(iv) restricts enrollment in the PAYE plan to borrowers already enrolled in the plan as of July 1, 2024. Section 685.209(c)(5)(i) also restricts enrollment in the ICR plan to borrowers who were on that plan as of July 1, 2024, except under § 685.209(c)(5)(ii), for borrowers who had a Direct Consolidation Loan disbursed on or after July 1, 2006, that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan. Finally, the rule made improvements to the 2015 REPAYE plan and renamed it the Saving on a Valuable Education (SAVE) plan.

As noted in the IDR final rule’s preamble and in response to public comments, the Department chose to limit future eligibility for PAYE and ICR because we believed the changes that the rule made to the 2015 REPAYE plan were such that virtually all borrowers who might otherwise have chosen ICR or PAYE would be better off under the updated REPAYE plan.⁷ (The Department refers to the amended version of the 2015 REPAYE plan as the “SAVE plan” in the remainder of this document.) Under that final rule, because the Department would be offering borrowers an option to repay their loans on the SAVE plan, limiting future enrolment on ICR and PAYE would not be inconsistent with the HEA requirements that the Department provide borrowers access to a repayment plan created under the income contingent repayment authority.

Since the publication of the IDR final rule, the SAVE plan has been challenged in Federal court actions.⁸ Those challenges have resulted in several preliminary orders stopping implementation of some or all major provisions of the SAVE plan.⁹ At the

time of this writing, an injunction pending appeal entered by the Eighth Circuit is in effect.¹⁰ That court order enjoins changes in loan repayment terms that increase the amount of income protected from payments, decrease the share of income borrowers pay on undergraduate loans, cease charging monthly interest that is not covered by a borrower’s payment so that they do not see their balance grow from unpaid interest, and provide loan forgiveness after a shorter period for borrowers with lower original principal balances.¹¹ That order also covers provisions not specific to the SAVE plan, including enjoining the Department from providing loan forgiveness to borrowers on the ICR, PAYE, and both SAVE and the 2015 REPAYE plans, as well as certain interest benefits available on those plans.¹²

In the IDR final rule, the Department explained that each of those SAVE plan provisions operated in a manner that was separate and independent from the others.¹³ For instance, we discussed how the provision to protect more income from payments operates separately from the provision affecting the share of income put toward undergraduate loans. We also noted in the IDR final rule that each of those four main provisions separately would make SAVE more advantageous for many borrowers than the existing repayment options, even if only any one of those four provisions was in place.

Following the Eighth Circuit’s injunction pending appeal and ongoing litigation, the Department is not currently complying with the HEA requirement to provide all Direct Loan borrowers with a repayment option issued under the income contingent repayment authority. The Department has placed borrowers enrolled in the SAVE plan into forbearance and is not currently able to offer borrowers a version of the SAVE plan that reflects the terms of the 2015 REPAYE plan that was in place prior to the issuance of the IDR final rule and is now in effect due

⁶ 88 FR 43820 (July 10, 2023).

⁷ 88 FR 43836 (July 10, 2023).

⁸ See *Alaska v. Cardona*, No. 24–cv–1057 (D. Kan.) (filed Mar. 28, 2024); *Missouri v. Biden*, No. 24–cv–520 (E.D. Mo.) (filed Apr. 9, 2024).

⁹ Specifically, in the *Missouri* case, the U.S. District Court for the Eastern District of Missouri entered a preliminary injunction on June 24, 2024, enjoining the shortened time to forgiveness that had been offered by the SAVE Plan. *Missouri v. Biden*, No. 4:24–CV–00520–JAR, 2024 WL 3104514, at *1 (E.D. Mo. June 24, 2024) (preliminary injunction). The challengers appealed and on July 18, 2024, the Eighth Circuit stayed the entire rule pending appeal, *Missouri v. Biden*, No. 24–2332, 2024 WL 3462265, at *1 (8th Cir. July 18, 2024), and then on August 9, 2024, the Eighth Circuit entered an injunction pending appeal that replaced the previously entered stay, *Missouri v. Biden*, 112

F.4th 531 (8th Cir. 2024) (per curiam) (injunction pending appeal). In the *Alaska* case, the U.S. District Court for the District of Kansas entered a preliminary injunction on June 24, 2024. See *Alaska v. Cardona*, No. 24–1057–DDC–ADM, 2024 WL 3104578, at *1 (D. Kan. June 24, 2024). Thereafter, the Tenth Circuit Court of Appeals stayed the preliminary injunction pending appeal. See *Alaska v. Cardona*, No. 20–3089, Order Staying Prelim. Inj. (10th Cir. June 30, 2024). That Tenth Circuit appeal has been held in abeyance pending the outcome of the Eighth Circuit proceedings.

¹⁰ *Missouri*, 112 F.4th at 538.

¹¹ See *id.*

¹² See *id.*

¹³ 88 FR 43828 (July 10, 2023); <https://www.federalregister.gov/d/2023-13112/p-147>.

¹ 20 U.S.C. 1087e(d)(1)(D).

² 86 FR 28299 (May 26, 2021).

³ 86 FR 43609 (Aug. 10, 2021).

⁴ 88 FR 1894 (Jan. 11, 2023).

⁵ <https://www.regulations.gov/document/ED-2023-OPE-0004-0001/comment>.

to the Eighth Circuit's injunction. The Department is actively working to offer borrowers a version of the SAVE plan that complies with the Eighth Circuit's injunction pending appeal, but doing so requires additional coding and development work across major systems and contractors in the Federal student loan system. The Department anticipates that such work will not be completed until well into 2025.

While the Department works to implement a compliant version of the SAVE plan, the absence of such a plan, coupled with the regulatory limitations on new borrowers enrolling in ICR and PAYE established by the IDR final rule, have rendered the Department unable to meet its statutory obligation to offer all Direct Loan borrowers in repayment the ability to make payments on an income contingent repayment plan as required by the HEA.¹⁴ In particular, the Department is not currently meeting its legal obligation to offer a plan under the income contingent repayment authority for student borrowers in repayment who are not already enrolled in PAYE, ICR, or SAVE. And for borrowers on SAVE who would like to make payments, such as those seeking Public Service Loan Forgiveness (PSLF), the Department is not able to accept payments or offer these borrowers a different plan under the income contingent repayment authority.

The changes in this IFR therefore address the immediate issue of the Department's inability to offer plans under the income contingent repayment authority to all Direct Loan borrowers in repayment, by adjusting the restrictions in the IDR final rule that prevented borrowers from enrolling in the PAYE or ICR plans after July 1, 2024, unless they were already on that plan on that date (provisions affecting borrowers who consolidate a Parent PLUS loan do not currently have an enrollment limitation date on ICR). Moving this date from July 1, 2024, to July 1, 2027, allows the Department to comply with the HEA while we continue to build a version of the SAVE plan that complies with the Eighth Circuit's injunction pending appeal. This adjustment also allows time for the Department to implement further changes that may result from final court orders on the merits of the SAVE plan, and would accommodate, if necessary, the master calendar for any additional required rulemaking. Because these changes are time-limited, the long-term effect of this IFR after July 1, 2027, is the same as what the Department established in the IDR final rule.

Good Cause To Waive Notice-and-Comment Rulemaking

The Department for good cause finds that conducting notice-and-comment rulemaking would be impracticable, as explained further below. Under the Administrative Procedure Act (APA), an agency is not required to conduct notice-and-comment rulemaking when the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."¹⁵ It is impracticable for the Department to conduct notice-and-comment rulemaking in this case, because doing so would further prevent us from complying with our statutory duty under the HEA to provide borrowers with an income contingent repayment plan option. *See, e.g.,* Riverbend Farms, Inc. v. Madigan, 958 F.2d 1479, 1484 n.2 (9th Cir. 1992) ("Notice and comment is 'impracticable' when the agency cannot 'both follow section 553 and execute its statutory duties.' . . . Emergencies, though not the only situations constituting good cause, are the most common.") (quoting *Levesque v. Block*, 723 F.2d 175, 184 (1st Cir. 1983)).

The Department issues this IFR so that it can expeditiously provide affected borrowers with the option to make payments on an income contingent repayment plan. Providing such a plan is an HEA requirement that the Department is not currently meeting for the vast majority of borrowers. In particular, borrowers who are not currently enrolled on PAYE or ICR do not have access to any repayment plan created under the income contingent repayment authority on which they can make payments, as is their statutory right. Borrowers not enrolled in an income contingent repayment plan can only sign up for the SAVE plan. But the Department cannot bill borrowers on SAVE, and has therefore placed them all in forbearance, because we are still making the administrative changes necessary to offer a version of that plan that complies with the Eighth Circuit injunction.¹⁶ Similarly, a borrower on the SAVE plan who wishes to make payments, such as a borrower seeking PSLF, does not have an income contingent repayment plan available to them that would provide such an opportunity.

Under section 492(b)(2) of the HEA, regulations governing rules under title IV of the HEA are generally subject to negotiated rulemaking, unless the Secretary determines that applying such

a requirement with respect to given regulations is impracticable, unnecessary, or contrary to the public interest (within the meaning of section 553(b) of title 5, United States Code), and publishes the basis for such determination in the **Federal Register** at the same time as the proposed regulations in question are first published. This standard is the same as the standard used under the under the APA to waive notice-and-comment rulemaking. Conducting a negotiated rulemaking process, followed by notice and comment rulemaking, typically takes 18 months from start to finish. It is important that the Department be able to comply with its statutory obligation to offer borrowers an income contingent repayment plan as quickly as possible so that borrowers can resume repaying their loans. By issuing this interim final rule, the Department is undertaking stop-gap measures to comply with the HEA by revising its regulations to adjust the dates limiting enrollment in PAYE and ICR that were previously adopted through negotiated rulemaking, followed by notice-and-comment rulemaking. The current provisions have benefited from negotiated rulemaking in the past, as well as notice-and-comment rulemaking.

Conducting negotiated and notice-and-comment rulemaking regarding availability of the ICR and PAYE plans would create an extended time-period during which the Secretary could not meet the statutory obligation to offer income contingent repayment to most borrowers. Accordingly, consistent with section 492(b)(2) of the HEA, the Secretary determines that applying the negotiated rulemaking requirement with respect to these regulations is impracticable within the meaning of 5 U.S.C. 553(b).

The Department undertook work over many months to prepare for the implementation of all provisions of the IDR final rule by July 2024. Although the regulations were issued in summer 2023 and some pieces were implemented beginning in July 2023, cases challenging the rule were filed in late March and early April 2024, with motions for emergency relief nearly concurrent with the complaints. Two district courts ruled on preliminary injunction motions on June 24, 2024, and from there the two cases have taken divergent paths through the district and appellate courts. These two different rulings just a few days prior to the rule's effective date meant it was not possible to reverse the many months of prior work immediately. The two circuit courts entered their own orders—one limiting the district court's injunction

¹⁴ HEA section 455(d)(1)(D).

¹⁵ 5 U.S.C. 553(b)(B).

¹⁶ *See Missouri*, 112 F.4th at 538 (injunction pending appeal).

and the other significantly expanding it. After each of these rulings, the Department had to reconfigure its stopgap measures to avoid violating any court rulings and to follow its obligations to borrowers. Following the Eighth Circuit's injunction, the Department focused on immediate compliance with the order, including going through the necessary change management with servicers, issuing stop work orders, and examining effects on a range of different systems. For example, the Department had to pause processing of applications, pause the new features that automatically calculated borrowers' payment amounts using a data match with another Federal agency, and reconfigure the online application for IDR plans, following a lengthy outage, in order to be in compliance.

This IFR allows the Department to comply as quickly as possible with the HEA requirement to offer an income contingent repayment plan. The Department is actively working to offer borrowers a version of the SAVE plan that complies with the Eighth Circuit injunction but anticipates that will not be completed until well into 2025. Providing such a plan requires making coding changes to major FSA systems related to loan repayment and working with all major student loan contractors. That involves a "change management process" that takes significant time to negotiate costs, test the new programming to confirm accuracy, and other necessary steps to make sure the Department does not violate any terms of the injunction. It is not until the first few steps of this process (drafting requirements, submitting change requests to servicers, receiving times and estimates and negotiating with servicers to complete the required work) are finished that the Department can accurately assess how long the rebuild will take. Once it became clear that this process would take the better part of a year, the Department needed to find a stopgap solution to meet its statutory obligations. As noted above, implementing these changes for a limited period also allows the Department to address any further alterations to income contingent repayment plans required by future court orders, while continuing to meet its HEA requirements. The long-term effect of these changes is the same as what was issued in the final IDR rules.

Regulations

The following is a discussion of the regulations in this IFR.

Statute: Section 455(d) of the HEA provides that the Secretary will offer a variety of plans for repayment of eligible

Direct Loans, including principal and interest on the loans. Section 455(d)(1)(D) of the HEA requires the Secretary to offer an income contingent repayment plan that allows borrowers to make payments of varying annual repayment amounts based on the borrower's income, paid over an extended period prescribed by the Secretary, not to exceed 25 years. Section 455(e)(4) of the HEA authorizes the Secretary to establish income contingent repayment plan procedures and repayment schedules through regulations. Section 455(e)(2) of the HEA provides that a repayment schedule for a Direct Loan that is repaid pursuant to the income contingent repayment authority is based on the adjusted gross income (AGI) (as defined in section 62 of the Internal Revenue Code of 1986) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the AGI of both the borrower and the borrower's spouse. Section 455(e)(7) of the HEA identifies the periods that the Secretary must include in the calculation of the maximum repayment period under the income contingent repayment plans.

Current Regulations: Section 685.209(c)(4)(iv) states that a borrower cannot repay a loan under the PAYE plan unless they were enrolled in that plan on July 1, 2024. Section 685.209(c)(5) also restricts enrollment in the ICR plan to borrowers who were on that plan as of July 1, 2024, or who had a Direct Consolidation Loan disbursed on or after July 1, 2006, that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan.

New Regulations: The Department adjusts the date after which a borrower cannot begin to repay a loan under PAYE unless they are already on the plan as provided in § 685.209(c)(4)(iv) from July 1, 2024, to July 1, 2027. Similarly, we revise the date after which borrowers cannot begin to repay a loan under ICR unless they are already on that plan or have a consolidation loan that repaid a Parent PLUS loan as provided in § 685.209(c)(5)(i)(B) from July 1, 2024 to July 1, 2027. Note that we are not changing § 685.209(c)(5)(iii), which provides that a borrower with a consolidation loan disbursed on or after July 1, 2025, that repaid a Parent PLUS loan may only access the ICR plan.

Reasons: Section 455(d)(1)(D) of the HEA requires the Secretary to offer Direct Loan borrowers in repayment the opportunity to make payments under an income contingent repayment plan that is based upon the borrower's income and for a period not to exceed 25 years. In the IDR final rule, the Department

adopted restrictions that limited PAYE to only borrowers who were enrolled in that plan as of July 1, 2024, and ICR to only borrowers who were enrolled in that plan as of July 1, 2024, or who had a consolidation loan that repaid a Parent PLUS loan. The Department adopted those policies on two grounds. First, we believed that borrowers were not harmed by the removal of access to PAYE and ICR, because the SAVE plan was superior to ICR and PAYE. The sunset of new enrollment in those plans still allowed the Department to meet its obligations to offer an income contingent repayment plan due to the presence of SAVE, and not leave any borrowers worse off. Second, we were concerned at the time that offering many repayment plans based upon borrowers' incomes created confusion for borrowers that made it harder for them to select the best plan and could cause some borrowers to not choose any of these plans and instead risk delinquency and default.

However, the Department is concerned that current restrictions on REPAYE plus the current inability to offer a version of the SAVE plan that complies with the Eighth Circuit's injunction pending appeal leaves us unable to meet our HEA requirement to offer an income contingent repayment plan to Direct Loan borrowers in repayment. The Department does not have discretion to waive this requirement.

The Department is therefore changing the dates limiting eligibility for the ICR and PAYE plans so that we can comply with the HEA requirement to offer an income contingent repayment plan to borrowers as fast as possible through a time-limited adjustment. Absent these changes, the only income contingent repayment plan currently available to borrowers who are newly entering repayment or who did not remain in the ICR or PAYE plan is the SAVE plan. However, the Eighth Circuit's injunction pending appeal requires the Department to update and modify that plan to offer a version that is compliant with the court order. The Department is actively working to make such changes. However, we anticipate they will not be ready until well into 2025, as changes must be made to every major system that touches student loan repayment, including significant additional work by Department contractors, the speed of which the Department is often unable to fully control. Those changes must be negotiated through the change management process and include extensive development and testing. Altering the eligibility dates for the PAYE and ICR plans therefore is the

only course available to the Department to make certain it meets its obligations under the HEA as fast as possible. These changes make no other alterations to the underlying terms or conditions of such plans, including no changes to the amount a borrower pays each month or the types of loans otherwise available.

The Department views these changes to the eligibility dates as severable, as each could operate sensibly and independently if the other were struck down. Specifically, § 685.209(c)(4)(iv) relates only to borrower eligibility to repay under PAYE, while § 685.209(c)(5)(i)(B) relates only to borrower eligibility to repay under ICR.

The Department is making these changes time-limited to reflect that providing a compliant version of SAVE will eventually allow us to otherwise fulfill our obligations under the HEA to offer an income contingent repayment plan. We ultimately selected the end date of July 1, 2027, because we believe that date provides a sufficient window to implement any future court-ordered changes to SAVE. Although the Department hopes for a final decision on the merits of the SAVE plan by summer 2025, it is possible the cases could not be fully resolved until later, even extending as far as summer 2026 or beyond. The Department also wants to make sure that if any further implementation work is needed to comply with a final decision, that the Department has time to meet its HEA requirement to offer borrowers an income contingent repayment plan. Because the Department generally implements changes to the title IV programs on July 1, at the start of the new award year, we believe July 1, 2027, is the most reasonable date that makes certain we will not need to further adjust dates if the litigation is not resolved relatively quickly.

Though the Department's focus in this IFR is on meeting its statutory requirement to offer borrowers an income contingent repayment plan, we note that the timing of the early implementation of these changes is also critical for borrowers due to the expiration of temporary benefits to help ease the transition to repayment following the national pause on payments, interest, and collections. In particular, until September 2024 the Department had in effect an on-ramp period that assisted borrowers who were unable to make their payments or needed more time to access information to best determine the right repayment plan. The on-ramp required borrowers to make their payments, and interest continued to accrue. However, the policy prevented the worst

consequences of missed, late, or partial payments, including negative credit reporting delinquent payments. Now that the on-ramp period has ended, borrowers who miss at least 90 days of payments will start seeing negative credit reporting as early as January 2025 and borrowers will start moving toward default. Making these time-limited changes now will allow borrowers to have the full set of repayment options required under the HEA as they begin to navigate this final stage of return to repayment.

The Department recognizes that granting access to PAYE and ICR for some additional time is contrary to the other policy goal stated in the IDR final rule of simplifying the set of repayment options for borrowers. However, we believe this step is reasonable in light of changed circumstances and legal developments that have occurred since the finalization of the rule that created those eligibility limitations. In particular, we enacted those limitations because borrowers would have access to the SAVE plan. But the Department is not currently able to offer a version of that plan that complies with the Eighth Circuit injunction. Therefore, the simplification goal of the IDR final rule is not currently achievable, and the Department is not otherwise meeting the HEA requirement to offer an income contingent repayment plan for borrowers who are not currently enrolled in ICR, PAYE, or REPAYE.

Finally, the Department notes that restoring access to PAYE and ICR is not inconsistent with the Eighth Circuit's injunction pending appeal that prevents the Department from providing loan forgiveness to borrowers on plans established under the income contingent repayment authority, nor with any other court order. The Eighth Circuit's injunction pending appeal affects the provision of forgiveness to borrowers on these plans, not the authority to offer them. The injunction, as the court noted, does not otherwise apply to borrowers on the PAYE and ICR plans and borrowers currently enrolled in those plans continue to make payments. The Department will continue to comply with any orders from any court preventing the offering of forgiveness on plans promulgated using the income contingent repayment authority.

Until borrowers receive final certainty about the pending cases, the necessary step taken by this IFR represents a stop-gap solution for the Department to carry out its responsibilities under the HEA. At the same time, it is critical to note that the Eighth Circuit's injunction against forgiveness, if continued long-

term, would impose a significant limitation on the share of borrowers who would achieve their best financial outcomes through a restored PAYE or ICR plan. As noted above, borrowers seeking PSLF and other subsets of borrowers who would benefit from entering repayment at a reduced payment amount would derive the greatest benefit from PAYE and ICR.

Regulatory Impact Analysis (RIA)

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) at OMB for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094. The proposed annual net budget effect is not larger than \$200 million, as a result this regulatory action is not significant under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094.

Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action and have determined that the benefits will justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and

explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and considering—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” OIRA has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that in the Department’s estimation best balance the size of the estimated transfer and qualitative benefits and costs. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action will not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, we compare the final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action and summarize key provisions, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act*, we identify and explain burdens specifically associated with information collection requirements.

1. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has found that this rule does not meet the criteria in 5 U.S.C. 804(2).

2. Need for Regulatory Action

These regulations address an urgent challenge that prevents the Department from currently complying with requirements in section 455(d)(1)(D) of the HEA to offer an income contingent repayment plan to Direct Loan borrowers. This is a result of restrictions on the ability of borrowers not currently enrolled in PAYE or ICR to participate in those plans, plus the urgent need to revise the SAVE plan to comply with an injunction issued by the Eighth Circuit. These regulations allow the Department to offer at least one repayment option under the income contingent repayment authority to borrowers on a time-limited basis while the Department actively works to carry out the operational steps necessary to offer an injunction-compliant version of SAVE.

3. Summary of Key Provisions

Provision	Regulatory section	Description of provision
Change eligibility limitation on PAYE to 2027.	§ 685.209(c)(4)(iv)	Limits PAYE to borrowers enrolled in that plan as of July 1, 2027, instead of July 1, 2024.
Change eligibility limitation on ICR.	§ 685.209(c)(5)(i)(B)	Limits ICR to a borrower who was enrolled in that plan as of July 1, 2027, instead of July 1, 2024, while continuing the exception for borrowers repaying a Direct consolidation loan that repaid a Parent PLUS loan.

4. Discussion of Costs, Benefits and Transfers

This rule adjusts the eligibility requirements that allow borrowers to enroll in the ICR and PAYE plans until July 1, 2027, an extension from the existing date of July 1, 2024.

As described further in the *Net Budget Impact* section of this RIA, the Department does not estimate a significant budgetary impact from this regulation. For existing borrowers, the Department already assumes in our budget baseline that borrowers who would benefit from PAYE or ICR over SAVE in the long term are already in those plans. As noted in the IDR final rule that created the SAVE plan,¹⁷ the Department’s budget modeling assigns IDR borrowers to specific plans based on a comparison of the net present value

of the payments the borrower makes under the various plans for which they are eligible. For future borrowers, we anticipate continued availability of the SAVE plan and do not evaluate borrowers having the choice of ICR or PAYE against IBR in the absence of SAVE. Moreover, the time-limited nature of these changes means that only a future borrower who enters repayment by July 1, 2027, would be able to select the ICR or PAYE plans.

The primary benefit of these changes for the Department is that they allow us to meet our statutory obligation under the HEA to offer payments under the income contingent repayment authority. There may also be secondary benefits to the Department. This includes the possibility that borrowers choose to enroll in PAYE or ICR instead of falling delinquent or going into default. It could also mean a reduction in

questions or concerns from borrowers, such as those seeking PSLF, who are trying to figure out how to make qualifying monthly payments.

Borrowers who elect to enroll in the PAYE or ICR plans during this time-limited period may also see some benefits, which would include some additional certainty about their payment amounts in the face of litigation as well as the ability to make progress toward certain types of forgiveness during the time until the pending cases are resolved. For instance, there are approximately 200,000 borrowers enrolled in the SAVE plan who have certified at least some employment toward PSLF, and who are eligible for the PAYE plan, but who are not eligible for the terms of the IBR plan offered to borrowers who first took out a loan on or after July 1, 2014. If these individuals choose to sign up for PAYE, they would

¹⁷ 88 FR 43820 (July 10, 2023).

be able to continue making progress toward PSLF by making payments equal to 10 percent of their discretionary income. By contrast, if these borrowers did not have access to PAYE, they would have to choose a version of the IBR plan that sets their payments at 15 percent of discretionary income. For instance, a single borrower who makes \$60,000 a year would pay \$318 a month on PAYE instead of \$477 on the older IBR plan, a savings of \$159. It is possible that there may be other borrowers on SAVE who would consider a switch on a temporary basis, such as a borrower who would have a \$0 payment on either PAYE or ICR. There were also just over 800,000 borrowers who switched from either of these plans onto SAVE after its creation.

Beyond borrowers currently enrolled in SAVE, there are approximately 13.9 million borrowers who are in repayment and who do not have Parent PLUS loans who are not currently on an income contingent repayment plan.¹⁸ While the Department cannot speculate on how many of these borrowers may want to sign up for either ICR or PAYE, depending on their eligibility, the Department is not currently meeting its obligations under the HEA to provide these borrowers with an income contingent repayment option.

The monthly payment savings described above would be similar for any borrower with older loans that are not eligible for the version of IBR for newer borrowers but who is eligible for PAYE. This could include borrowers who have recently returned to repayment through the Fresh Start Initiative, which allowed borrowers to exit default. It also could include older borrowers who are now considering IDR plans.

This IFR creates administrative costs relating to systems updates that allow borrowers to access PAYE and ICR. We anticipate these would be one-time costs of \$400,000 as these plans still exist for continuously enrolled borrowers. The ability to select PAYE or ICR could also create costs in the form of transfers if borrowers are able to select plans that produce lower payments over the borrower's time in repayment. The nature and extent of these costs depends on baseline policy, namely what other plans are available and the terms of those plans. We do not anticipate these costs will be significant, as we discuss in the *Net Budget Impact* section.

There may be additional costs related to the potential that borrowers may have a harder time choosing among repayment plans. However, we think several factors mitigate this concern. One is that, until a version of the SAVE plan that is compliant with the court injunction is available, the number of options for borrowers to make payments on an income contingent repayment plan will not be appreciably larger. For some borrowers, the ICR plan may be their only option, while the choice for borrowers who are eligible for PAYE and ICR should be simple, because the former generally produces lower payments for most borrowers. Over the long run, the time-limited nature of these changes means that eventually borrowers will go back to only choosing the SAVE plan, or the ICR plan if they have a consolidation loan that repaid a Parent PLUS loan. The Department will also continue working to improve and update tools available to help borrowers choose their plans.

5. Net Budget Impact

As the Department expects the SAVE plan to be available and advantageous to most borrowers in the long run, we do not estimate a significant budget impact from making PAYE and ICR available again to eligible borrowers, including those who had chosen SAVE. As was noted in the final rule that created the SAVE plan (88 FR 43820), the Department's budget modeling assigns IDR borrowers to specific plans based on a comparison of the net present value of the payments the borrower makes under the various plans for which they are eligible.¹⁹ That means the borrowers we estimate would be better off in PAYE or ICR are already in that plan in the President's Budget for fiscal year (FY) 2025 (PB2025) baseline. These borrowers are generally going to be those who have graduate debt and those with incomes that are expected to rise to the point where their calculated payment would eventually be equal to or greater than what they would owe on the 10-year standard repayment plan. These borrowers might be better off on PAYE because the terms of PAYE, absent the current injunction, provide for forgiveness after 20 years of payments instead of the 25 years on IBR if the loan was borrowed before July 1, 2014, or the 25 years for graduate borrowers on SAVE.²⁰ In addition, PAYE caps payments at the amount

determined under the 10-year standard plan for borrowers so long as their payments were below that level when they first enrolled. By contrast, there is no payment cap on SAVE. With this assumption that borrowers know their income and family profile trajectories over the life of their loans and choose the plan that offers the lowest lifetime, present-discounted payments, the regulation provides borrowers with an option to enroll in a non-SAVE income contingent repayment plan that does not have a significant scoreable budgetary impact.

However, there is considerable uncertainty regarding when borrowers in SAVE may see their payments resume due to ongoing litigation. A lengthy forbearance for borrowers in the SAVE plan could lead some borrowers to decide to enroll in a different income contingent repayment plan if that would result in lower net present value of payments. In order to evaluate this, the Department has done a sensitivity analysis that includes a nine-month forbearance in FY 2025 that does not count toward IDR forgiveness with the PB2025 baseline SAVE borrowers and compared that to a run with the SAVE or PAYE/ICR choice redone to include that forbearance in the choice decision. As is the case for the baseline choice decision, the plan choice for the sensitivity is based on the net present value (NPV) at a 30 percent discount rate between the cashflow streams for each plan generated for the borrower sample. This is the approach the Department has used for modeling IDR plan choice decisions and takes into account changes across the entire payment stream. This approach assumes borrowers know their income and family profile trajectories over the life of their loans and choose the plan that offers the lowest lifetime, present-discounted payments. The Department recognizes that borrowers may use different logic when choosing a repayment plan, such as comparing near-term monthly payments, and will not have information about their future incomes and family patterns to match this type of analysis, but we believe any decision logic would result in a relatively small percentage of borrowers choosing to revert to PAYE or ICR long-term. The sensitivity run resulted in a cost of \$70.5 million, which represents the effect of the change in payments on the estimated net present value of all future non-administrative Federal costs associated with cohorts of loans.

6. Accounting Statement

As required by OMB Circular A-4, we have prepared an accounting statement

¹⁸ We exclude borrowers with a Parent PLUS loan because those who consolidate would have access to the ICR plan regardless of this IFR. This number also excludes borrowers in deferments.

¹⁹ <https://www.federalregister.gov/d/2023-13112/p-1006>.

²⁰ Forgiveness on income contingent repayment plans is currently enjoined, but the modeling discussed here took place prior to that injunction.

showing the classification of the expenditures associated with the provisions of these regulations. These effects occur over the lifetime of the first ten loan cohorts following implementation of this rule. The

cashflows are discounted to the year of the origination cohort in the modeling process and then those amounts are discounted at two percent to the present year in this Accounting Statement. This table provides our best estimate of the

changes in annualized monetized transfers that result from these final regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

Category	Benefits
Complying with statutory requirements to offer an income contingent repayment plan	Not quantified.
Category	Costs (2%)
One-time administrative costs to Federal Government to update systems and contracts to implement the final regulations ..	\$0.04.
Category	Transfers (2%)
Reduced transfers from borrowers based on borrowers now accessing PAYE or ICR	Not quantified.

7. Alternatives Considered

The Department considered a few alternatives in issuing this IFR. First, we considered not issuing any regulations and leaving access to IDR plans unchanged. Second, we considered not issuing these regulations as an IFR and instead conducting negotiated rulemaking followed by notice and comment. However, for the reasons explained above, we decided to make these changes in an IFR. As outlined in the preamble to this IFR, we are making these time-limited changes because the Department is not currently complying with the statutory requirement to offer borrowers an income contingent repayment plan while we work to offer a version of the SAVE plan that complies with the Eighth Circuit's injunction. We also considered alternative new dates for when a borrower would no longer be able to access PAYE or ICR unless they were already enrolled in that plan. All the dates we considered were on July 1 to reflect the start of the new award year, which is when changes to Federal student aid regulations generally go into effect. We initially considered dates before July 1, 2026 but were concerned that we may not have a final decision on SAVE by that point and therefore will not know if we need to make any further changes that would prevent us from offering a compliant version of SAVE by that date. We also declined to use these earlier dates because we thought choosing a date to sunset these provisions that was the same as or before the effective date of this IFR would generate unwanted confusion. Because we want to provide clarity to borrowers and not make further adjustments to the dates in this IFR, we chose July 1, 2027, as the date that provides sufficient time to make certain the Department is not again in a

position of being unable to offer an income contingent repayment plan without making a change that reopens PAYE and ICR without a cutoff.

8. Regulatory Flexibility Act

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final regulatory action will not have a significant economic impact on a substantial number of "small entities."²¹

These regulations will not have a significant impact on a substantial number of small entities because they are focused on arrangements between the individual borrower and the Department. There are no small entities that are impacted by this rule. This rule does not affect institutions of higher education in any way, and those entities are typically the focus of the Regulatory Flexibility Act analysis for the Department of Education.

9. Paperwork Reduction Act

We have determined that there are no Paperwork Reduction Act of 1995 implications specifically associated with regulations in this IFR. Borrowers who wish to sign up for PAYE or ICR repayment plans under this IFR will be completing the form that already exists for enrollment in other IDR plans, OMB Control Number 1845-0102. To accommodate the changes made to the programs in the IDR final rule and the court challenges, we are separately updating the current IDR form under an emergency clearance and will be providing a full 60-day and 30-day public comment period. We do not estimate any new burden to 1845-0102 from this IFR.

²¹ 5 U.S.C. 601(3), (4), (5), and (6) defines *small business*, *small organization*, *small governmental jurisdiction*, and *small entity*, respectively.

10. Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

11. Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether these final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

12. Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means 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. The regulations do not have federalism implications.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or

text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

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List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Miguel Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 685 of title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 2. Amend § 685.209 by revising paragraphs (c)(4) and (5) to read as follows:

§ 685.209 Income-driven repayment plans.

* * * * *

(c) * * *

(4) A borrower may repay under the PAYE plan only if the borrower—

(i) Has loans eligible for repayment under the plan;

(ii) Is a new borrower;

(iii) Has a partial financial hardship when the borrower initially enters the plan; and

(iv) Was repaying a loan under the PAYE plan on July 1, 2027. A borrower who was repaying under the PAYE plan on or after July 1, 2027, and changes to a different repayment plan in

accordance with § 685.210(b) may not re-enroll in the PAYE plan.

(5)(i) Except as provided in paragraph (c)(5)(ii) or (iii) of this section, a borrower may enroll under the ICR plan only if the borrower—

(A) Has loans eligible for repayment under the plan; and

(B) Was repaying a loan under the ICR plan on July 1, 2027. A borrower who was repaying under the ICR plan on or after July 1, 2027, and changes to a different repayment plan in accordance with § 685.210(b) may not re-enroll in the ICR plan unless they meet the criteria in paragraph (c)(5)(ii) or (iii) of this section.

(ii) A borrower may choose the ICR plan to repay a Direct Consolidation Loan disbursed on or after July 1, 2006, and that repaid a parent Direct PLUS Loan or a parent Federal PLUS Loan.

(iii) A borrower who has a Direct Consolidation Loan disbursed on or after July 1, 2025, which repaid a Direct parent PLUS loan, a FFEL parent PLUS loan, or a Direct Consolidation Loan that repaid a consolidation loan that included a Direct parent PLUS or FFEL parent PLUS loan, may not choose any IDR plan except the ICR plan.

* * * * *

[FR Doc. 2024–26698 Filed 11–14–24; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2024–0117; FRL–12283–02–R1]

Air Plan Approval; Connecticut; New Haven and Fairfield Counties Second 10-Year Limited Maintenance Plan for the 2006 24-Hour PM_{2.5} Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. On May 9, 2023, and supplemented on February 21, 2024, the State submitted a Limited Maintenance Plan (LMP) for the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS) for New Haven and Fairfield Counties (New Haven-Fairfield). This revision provides for the maintenance of the 2006 24-hour PM_{2.5} NAAQS through the end of the second 10-year portion of the maintenance period. Additionally, EPA finds the LMP to be adequate since it meets the appropriate transportation

conformity requirements. The intended effect of this action is to approve Connecticut's LMP for the 2006 24-hour PM_{2.5} NAAQS for the New Haven-Fairfield maintenance area into the Connecticut SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on December 16, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2024–0117. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Ayla Martinelli, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MJ), Boston, MA 02109–3912, tel. (617) 918–1057, email martinelli.ayla@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On December 14, 2009, EPA designated the New Haven-Fairfield area as nonattainment for the 2006 PM_{2.5} NAAQS (74 FR 58688). Subsequently, on October 24, 2013, EPA redesignated the New Haven-Fairfield area to attainment for the 2006 PM_{2.5} NAAQS (78 FR 58467). On September 27, 2024, EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut (89 FR 79189). The NPRM

proposed approval of the State's second, 10-year LMP for the 2006 PM_{2.5} standard for the New Haven-Fairfield area. The formal SIP revision was submitted by Connecticut on May 9, 2023, and supplemented on February 21, 2024.

The New Haven-Fairfield LMP for the 2006 PM_{2.5} NAAQS submitted by the Connecticut Department of Energy and Environmental Protection (CT DEEP) is designed to maintain the 2006 PM_{2.5} NAAQS within this area through the end of the second ten-year portion of the maintenance period. EPA is approving the plan because it meets all applicable requirements under CAA sections 110 and 175A. We are also finding the LMP to be adequate as it pertains to transportation conformity requirements. Other specific requirements of the LMP and the rationale for EPA's action are explained in the NPRM and will not be restated here. One public comment was received on the NPRM.

II. Response to Comments

EPA received one comment during the comment period. The comment we received supports the final approval of the proposed action.

III. Final Action

EPA is approving the Connecticut LMP for the New Haven-Fairfield area for the 2006 24-hour PM_{2.5} NAAQS as a revision to the Connecticut SIP. EPA is also finding the LMP to be adequate as it pertains to transportation conformity requirements.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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, Feb. 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.”

CT DEEP did not evaluate environmental justice considerations as

part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2025. 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, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: November 7, 2024.

David Cash,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Amend § 52.370 by adding paragraph (c)(134) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(134) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on May 9, 2023, and supplemented on February 21, 2024.

(i) [Reserved]

(ii) Additional materials.

(A) The Connecticut Department of Energy and Environmental Protection document “Limited Maintenance Plan for Connecticut’s Fine Particulate Matter (PM_{2.5}) Maintenance Area” dated March 2023.

(B) The CT DEEP document “Motor Vehicle Assessment for Connecticut’s Fine Particulate Matter (PM_{2.5}) Maintenance Area Limited Maintenance Plan” received via email dated July 4, 2023.

■ 3. Amend § 52.379 by adding paragraph (i) to read as follows:

§ 52.379 Control Strategy: PM_{2.5}

* * * * *

(i) Approval—EPA is approving a 2006 24-hour PM_{2.5} standard Limited Maintenance Plan for the Connecticut portion of the New York-N New Jersey-Long Island, NY-NJ-CT fine particle (PM_{2.5}) maintenance area, covering New Haven and Fairfield Counties, which covers the remaining 10-year portion of the 20-year maintenance period. Connecticut submitted this plan to EPA on May 9, 2023, and supplemented it on February 21, 2024.

[FR Doc. 2024–26329 Filed 11–14–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 202

[Docket DARS–2024–0033]

RIN 0750–AM23

Defense Federal Acquisition Regulation Supplement: Updates to the Definition of Departments and Agencies (DFARS Case 2024–D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide updates to the existing definition of “departments and agencies.”

DATES: Effective November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Tonya De Saussure, telephone (202) 805–1388.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule revises the DFARS definition of “departments and agencies” at DFARS 202.101, Definitions, to add recently established defense agencies. This update is part of a periodic policy review to ensure the accuracy of the regulation. The last update to this definition occurred on January 30, 2013 (77 FR 76938), under DFARS case 2012–D045.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not have a significant effect beyond the internal operating procedures of DoD. The final rule provides for recent additions to the

defense agencies identified in the definition of “departments and agencies.”

III. Applicability to Contracts At or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 202

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 202 as follows:

- 1. The authority citation for 48 CFR part 202 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

- 2. Amend section 202.101 by revising the definition of “Departments and agencies” to read as follows:

202.101 Definitions.

* * * * *

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy, and the Space Force is a part of the Air Force). The defense agencies are the Chief Digital and Artificial Intelligence Office, the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Contract Management Agency, the Defense Counterintelligence and Security Agency, the Defense Finance and Accounting Service, the Defense Health Agency, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Logistics Agency, the Defense Threat Reduction Agency, the Missile Defense Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Strategic Capabilities Office, the United States Cyber Command, the United States Special Operations Command, the United States Transportation Command, and the Washington Headquarters Service.

* * * * *

[FR Doc. 2024–26059 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 212, 215, and 225

[Docket DARS–2023–0043]

RIN 0750–AK33

Defense Federal Acquisition Regulation Supplement: Inapplicability of Additional Defense-Unique Laws and Certain Non-Statutory DFARS Clauses to Commercial Item Contracts (DFARS Case 2018–D074)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2018 and 2019 regarding the applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf items.

DATES: Effective November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, telephone 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 80468 on November 17, 2023, to amend the DFARS to implement paragraphs (b) and (c) of section 849 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) and section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Paragraph (b) of section 849 requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to Federal Acquisition Regulation (FAR) part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation. Paragraph (c) of section 849 requires that DoD review the DFARS and propose revisions to eliminate certain contract clause requirements applicable to commercially available off-the-shelf (COTS) item subcontracts, except for regulations required by law or Executive

order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

Paragraph (a) of section 837 of the NDAA for FY 2019 revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994” (the date of the Federal Acquisition Streamlining Act (FASA) of 1994). DoD published an extension to the comment period in the **Federal Register** on December 27, 2023, at 88 FR 89357. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule; however, no changes were made to the rule as a result of the comments received. A discussion of the comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

DFARS 212.371 is amended to add the contract clauses at DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, and 252.205–7000, Provision of Information to Cooperative Agreement Holders, to the list of solicitation provisions and contract clauses that are inapplicable to contracts for the acquisition of COTS items. These clauses are not applicable to contracts solely for the acquisition of COTS items. DFARS 212.301 is amended to restore, to the list of provisions and clauses that apply to commercial products and commercial services, the clause at DFARS 252.203–7005, Representation Relating to Compensation of Former DoD Officials, that was removed from the list in the proposed rule. This change aligns this final rule with the final rule for DFARS Case 2010–D020 published in the **Federal Register** on November 18, 2011 (76 FR 71826).

B. Analysis of Public Comments

Comment: One respondent recommended that DFARS clause 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, be removed from the DFARS as it is obsolete, since the United States is no longer involved in Afghanistan and is no longer purchasing uniform components for the Afghan military or the Afghan National Police.

Response: DoD acknowledges the respondent’s concern relating to the applicability of DFARS clause 252.225–7029; however, the clause cannot be removed from the DFARS until the

underlying statutory requirement is repealed.

Comment: One respondent indicated that the proposed rule did not sufficiently address the extent to which DoD reviewed, on a case-by-case basis, the applicability of all regulations that require specific contract clauses for contracts using the procedures in part 12 of the FAR and for subcontracts for COTS items. The respondent requested that DoD publish a second proposed rule that explains and describes the case-by-case determinations that DoD made with respect to each of these regulations.

Response: Section II of the preamble of the proposed rule provided a description of the analysis performed. In addition, the proposed rule for DFARS Case 2017–D010 (83 FR 30646) provided a description of the analysis performed of commercial product and commercial service applicability for DoD-unique statutes and associated contract clauses issued on or after January 1, 2015. In reviewing the remaining provisions and clauses, DoD considered procurement-related reasons including, but not limited to, the following: national security, common commercial practice, domestic preference, prohibited sources, trade agreements, protection of the Government, health and safety, and foreign military sales requirements.

C. Other Changes

A conforming change is made to the prescription at 205.470 for the clause at DFARS 252.205–7000. Language at 203.171–4(b) regarding applicability to commercial products and commercial services, which was proposed for deletion, has been restored in the prescription for the provision at DFARS 252.203–7005. DFARS 212.205, Offers, is removed to align with changes made at DFARS 215.371–4(a)(7). DFARS 212.371 is amended to change the date “October 14, 1994”, to “October 13, 1994” to align with 10 U.S.C. 3452. The prescription at DFARS 225.1103(4) for the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, is amended to add the requirement to include the clause in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, to align with the determination made in the final rule for DFARS Case 2018–D020 published on December 21, 2018, at 83 FR 66066.

III. Applicability to Contracts At or Below the Simplified Acquisition Threshold (SAT), for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. However, the final rule clarifies the applicability of the following provisions and clause by amending the list under paragraph (f) at DFARS 212.301, Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services, to remove DFARS clause 252.203–7003, Agency Office of the Inspector General, and DFARS provision 252.215–7007, Notice of Intent to Resolicit. This rule also clarifies the applicability of certain provisions and clauses by amending the list at DFARS 212.370, Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and COTS items, to add the following: (1) DFARS clause 252.203–7003, Agency Office of the Inspector General; and (3) DFARS provision 252.215–7007, Notice of Intent to Resolicit. In addition, this rule makes similar clarifications at DFARS 212.371, Inapplicability of certain provisions and clauses to contracts for the acquisition of COTS items, to add the following: (1) DFARS clause 252.205–7000, Provision of Information to Cooperative Agreement Holders; (2) DFARS provision 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls; (3) DFARS clause 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; (4) DFARS provision 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements; (5) DFARS clause 252.204–7020, NIST SP 800–171 DoD Assessment Requirements; and (6) DFARS clause 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

IV. Expected Impact of the Proposed Rule

This final rule could impact any large or small business that is awarded a commercial contract by DoD. This rule does not add any new solicitation provisions or contract clauses. Rather, there may be a reduction in burden on contractors by making one solicitation provision and one contract clause no longer applicable to solicitations and contracts for commercial products, commercial services, and COTS items, and by making two provisions and four

clauses no longer applicable to solicitations and contracts for COTS items.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule is necessary to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and the NDAA for FY 2019 regarding the applicability of certain solicitation provisions and contract clauses to contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items.

The objective of this rule is to implement paragraphs (b) and (c) of section 849 of the NDAA for FY 2018 (Pub. L. 115–91). Section 849 paragraph (b) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to FAR part 12 commercial product and commercial service acquisitions, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a

specific reason not to eliminate the regulation. Section 849 paragraph (c) requires an amendment to the DFARS to eliminate certain contract clause requirements applicable to COTS item subcontracts, except for regulations required by law or Executive order, unless the Secretary of Defense determines that there is a specific reason not to eliminate the regulation.

This rule also includes revisions to implement paragraph (a) of section 837 of the NDAA for FY 2019 (Pub. L. 115–232). Section 837 paragraph (a) revises 10 U.S.C. 2375(b)(2), redesignated as 10 U.S.C. 3452(b)(2), by deleting the date “January 1, 2015” and adding the date “October 13, 1994.” This rule implements the change at 10 U.S.C. 3452(b)(2) by amending the DFARS to eliminate solicitation provisions and contract clauses enacted after October 13, 1994, not including the provisions or clauses referred to in 10 U.S.C. 3452(e)(1), (e)(2), and (e)(3), from commercial product and commercial service solicitations and contracts, respectively, unless the Under Secretary of Defense for Acquisition and Sustainment makes a written determination that it would not be in the best interest of the Department of Defense to exclude them.

No significant issues were raised by the public comments in response to the initial regulatory flexibility analysis.

According to data from the Federal Procurement Data System for FY 2021 through FY 2023, DoD awarded approximately 31,022 contracts for commercial products, commercial services, or COTS items to an average of 13,335 unique small entities per year. Therefore, DoD estimates that the number of small entities to which this rule will apply is 13,335.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known alternatives that would accomplish the stated objectives of the statutes.

VIII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 203, 204, 205, 212, 215, and 225

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition
Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 203, 204, 205, 212, 215, and 225 as follows:

■ 1. The authority citation for parts 203, 204, 205, 212, 215, and 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Amend section 203.1004 by revising paragraph (a) to read as follows:

203.1004 Contract clauses.

(a) Use the clause at 252.203–7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct.

* * * * *

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 204.7403 by revising paragraph (b) to read as follows:

204.7403 Contract clauses.

* * * * *

(b) Use the clause at 252.204–7015, Notice of Authorized Disclosure of Information for Litigation Support, in solicitations and contracts that involve litigation support services, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 4. Revise section 205.470 to read as follows:

205.470 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, except for solicitations and contracts solely for the acquisition of commercially available off-the-shelf items, that are expected to exceed \$1.5

million. This clause implements 10 U.S.C. 4957.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.205 [Removed]

■ 5. Remove section 212.205.

■ 6. Amend section 212.301—

■ a. In paragraph (f)(i)(B) by removing “section 847 of Pub. L. 110–181” and adding “section 847 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181)” in its place;

■ b. By removing paragraph (f)(i)(D);

■ c. By redesignating paragraph (f)(i)(E) as (f)(i)(D);

■ d. By revising paragraphs (f)(ii)(B) through (D);

■ e. By removing paragraph (f)(vi)(C);

■ f. By redesignating paragraphs (f)(vi)(D), (E), and (F) as paragraphs (f)(vi)(C), (D) and (E), respectively;

■ g. By revising paragraph (f)(viii)(D);

■ h. By revising paragraphs (f)(x)(J) through (L), (U), and (Y);

■ i. In paragraph (f)(xi)(A) by removing “Pub. L.” and adding “Public Law” in its place;

■ j. By revising paragraph (f)(xi)(B);

■ k. In paragraph (f)(xii)(C) by removing “227.7102–4(c)” and adding “227.7102–4(c), to comply with 10 U.S.C. 3781–3786” in its place;

■ l. In paragraph (f)(xiv)(D) by removing “232.7102” and adding “232.7102, to comply with 26 U.S.C. 6331(h)” in its place; and

■ m. By revising paragraphs (f)(xv)(A) and (B), (f)(xx)(B), and (f)(xxi)(A) and (D).

The revisions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(ii) * * *

(B) Use the provision at 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, as prescribed in 204.7304(a), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(C) Use the clause at 252.204–7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in 204.7304(b), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National

Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

(D) Use the clause at 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, as prescribed in 204.7304(c), to comply with section 941 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and section 1632 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291).

* * * * *

(viii) * * *

(D) Use the provision at 252.219–7012, Competition for Religious-Related Services, as prescribed in 219.270–3, to comply with section 898 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

* * * * *

(x) * * *

(J) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009–5, to comply with section 8065 of Public Law 107–117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at 252.225–7017, Photovoltaic Devices, as prescribed in 225.7017–4(a), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(L) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b), to comply with section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

* * * * *

(U) Use the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703–4(d), to comply with section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

* * * * *

(Y) Use the clause at 252.225–7039, Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in 225.302–6, to comply with section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

* * * * *

(xi) * * *

(B) Use the provision at 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in 226.7203, to comply with section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

* * * * *

(xv) * * *

(A) Use the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in 237.173–5, to comply with section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

(B) Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, as prescribed in 237.171–4, to comply with section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

* * * * *

(xx) * * *

(B) Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in 246.270–4, to comply with section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84).

* * * * *

(xxi) * * *

(A) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

* * * * *

(D) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(c), to comply with section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364).

* * * * *

■ 7. Amend section 212.370 by adding paragraphs (b) and (c) to read as follows:

212.370 Inapplicability of certain provisions and clauses to contracts and subcontracts for the acquisition of commercial products, commercial services, and commercially available off-the-shelf items.

* * * * *

(b) 252.203–7003, Agency Office of the Inspector General.

(c) 252.215–7007, Notice of Intent to Resolicit.

■ 8. Amend section 212.371 by—

■ a. Revising the introductory text;

■ b. Redesignating paragraphs (b) through (d) as paragraphs (h) through (j), respectively; and

■ c. Adding new paragraphs (b) through (g).

The revision and additions read as follows:

212.371 Inapplicability of certain provisions and clauses to contracts for the acquisition of commercially available off-the-shelf items.

Commercially available off-the-shelf (COTS) items are a subset of commercial products. Therefore, the provisions and clauses listed in 212.370 as not applicable to contracts or subcontracts for the acquisition of commercial products are also not applicable to contracts or subcontracts for the acquisition of COTS items. In addition, the following provisions and clauses published after October 13, 1994, not expressly authorized in law, are not applicable or are modified in their applicability to contracts for the acquisition of COTS items:

* * * * *

(b) 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls.

(c) 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting.

(d) 252.204–7019, Notice of NIST SP 800–171 DoD Assessment Requirements.

(e) 252.204–7020, NIST SP 800–171 DoD Assessment Requirements.

(f) 252.204–7021, Cybersecurity Maturity Model Certification Requirements.

(g) 252.205–7000, Provision of Information to Cooperative Agreement Holders.

* * * * *

212.504 [Amended]

■ 9. Amend section 212.504—

■ a. By removing paragraph (a)(xiii);

■ b. By redesignating paragraphs (a)(xiv) and (xv) as paragraphs (a)(xiii) and (xiv), respectively; and

■ c. In the newly redesignated paragraph (a)(xiv) by removing “(section 8065 of Pub. L. 107–117)” and adding “(section 8065, Pub. L. 107–117)” in its place.

212.505 [Amended]

■ 10. Amend section 212.505 in the second sentence of the introductory text by removing “or modified in their applicability” and adding “or are modified in their applicability” in its place.

PART 215—CONTRACTING BY NEGOTIATION

■ 11. Amend section 215.371–4—

■ a. In paragraph (a) introductory text by removing “section”; and

■ b. By adding paragraph (a)(7).
The addition reads as follows:

215.371–4 Exceptions.

(a) * * *

(7) Acquisitions of commercial products and commercial services using FAR part 12 procedures.

* * * * *

■ 12. Revise section 215.371–6 to read as follows:

215.371–6 Solicitation provision.

Use the provision at 252.215–7007, Notice of Intent to Resolicit, in competitive solicitations that will be solicited for fewer than 30 days, unless an exception at 215.371–4 applies or the requirement is waived in accordance with 215.371–5.

PART 225—FOREIGN ACQUISITION

■ 13. Amend section 225.1103 by revising paragraph (4) to read as follows:

225.1103 Other provisions and clauses.

* * * * *

(4) Unless an exception in 225.770–3 applies, use the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

[FR Doc. 2024–26054 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS–2024–0035]

RIN 0750–AM13

Defense Federal Acquisition Regulation: Past Performance of Affiliate Companies of Small Business Concerns (DFARS Case 2024–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2024 that provides direction to contracting officers evaluating the past performance of small business concerns.

DATES: Effective November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule amending the DFARS to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31). Section 865 requires DoD contracting officers to consider relevant past performance of affiliate companies of small business concerns during the evaluation of past performance in response to a competitive solicitation.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because there is no significant cost or administrative impact on contractors or offerors. When past performance will be evaluated in a source selection, contracting officers already request offerors to submit past performance information. This rule will allow offerors to provide past performance information for an affiliate company within that submission, and the Government would consider those submissions during the existing evaluation process.

III. Applicability to Contracts At or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 215

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise and republish section 215.305 to read as follows:

215.305 Proposal evaluation.

(a)(2) *Past performance evaluation.*
(A) When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(B) Contracting officers shall consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at 219.702–70 as part of the evaluation of the past performance.

(C) When evaluating the past performance of an offeror that is a small business concern in response to a competitive solicitation, contracting officers shall consider relevant past performance information provided for affiliates of the offeror.

[FR Doc. 2024–26055 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 225**

[Docket DARS–2024–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to add a pointer to new text in DFARS Procedures, Guidance, and Information.

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 225 as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 225.270 to subpart 225.2 to read as follows:

225.270 Energy savings service contracts.

If construction and construction materials will be used during the performance of a contract for DoD energy savings service requirements, see PGI 225.270 for additional guidance.

[FR Doc. 2024–26053 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

GENERAL SERVICES ADMINISTRATION**48 CFR Parts 501, 552, and 570**

[GSAR Case 2020–G512; Docket No. 2024–0010; Sequence No. 1]

RIN 3090–AK22

General Services Administration Acquisition Regulation; SAM Representation for Leases

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to remove the requirement for lease offerors to have an active System for Award Management registration when submitting offers and instead allow offers up until the time of award to obtain an active registration.

DATES: Effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms.

Michaela Mastroianni, Procurement Analyst, or Ms. Amy Lara, Procurement Analyst, at gsarpolicy@gsa.gov or 816–926–7172. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at GSARegSec@gsa.gov or 202–501–4755. Please cite GSAR Case 2020–G512.

SUPPLEMENTARY INFORMATION:**I. Background**

GSA published a proposed rule in the **Federal Register** at 89 FR 21230 on March 27, 2024, to amend the GSAR to create a SAM registration provision specific for the acquisitions of leasehold interests in real property. This provision was prompted by the implementation of FAR Case 2015–005 (see 83 FR 48691), which clarified the timing of registration in the System for Award Management (SAM). Effective October 2018, this FAR case implemented the requirement for an offeror to be registered in SAM prior to the submission of an offer as opposed to the offeror being registered prior to award as was previously followed before the FAR change. While leasing of real property is not subject to the FAR, GSA prescribed FAR clause 52.204–7 in solicitations for the lease of real property. It found this FAR amendment had a significant effect on prospective GSA lessors.

On February 12, 2020, GSA established a GSA specific version of the FAR clause to permit the completion of SAM representation for leases prior to award instead of prior to offer for leasing companies. GSA would therefore only require the apparent awardee to complete the SAM registration. This change will codify this provision in the GSAR.

II. Discussion and Analysis**A. Analysis of Public Comments**

GSA provided the public a 60-day comment period (March 27, 2024, to May 28, 2024). GSA did not receive any comments from the public.

B. Summary of Changes

Two editorial fixes were made:

- GSA corrected the Office of Management and Budget (OMB) Control Number referenced in error in the proposed rule and included the OMB Control Number in GSAR 501.106 for this final rule.

- The prescribed Alternate I (552.270–35) language was erroneously not included in the proposed rule. This language is now included.

III. Expected Impact of the Rule

There were no public comments received that are specific to the

economic impact statement of the rule. As such, the analysis remains the same as before. This rule is not expected to have a significant impact to Government or industry. This rule will reduce the burden on leasing companies by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer. Completing SAM representations prior to offer for each property is time consuming for a leasing company and burdensome to effective competition. This will streamline the process and encourage competition, which will benefit the Government.

IV. Executive Orders 12866, 13563 and 14904

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 Modernizing Regulatory Review (<https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Information and Regulatory Affairs (OIRA) has determined this rule not to be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

OIRA has determined this rule is not to be a “major rule” under 5 U.S.C. 804(2). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect

until 60 days after it is published in the **Federal Register**.

VI. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because it reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer, and does not implement new or changed requirements. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 604.

The Regulatory Secretariat will submit a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

The analysis is summarized as follows:

GSA is amending the GSAR to permit the completion of the SAM representations at award instead of at offer for lease procurements.

There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis.

Two editorial fixes were made:

- GSA corrected the OMB Control Number referenced in error in the proposed rule and included the OMB Control Number in GSAR 501.106 for this final rule.
- The prescribed Alternate I (552.270–35) language was erroneously not included in the proposed rule. This language is now included.

The objective of the rule is to amend the GSAR to amend Part 552, Solicitation Provisions and Contract Clauses, of the GSAR by creating Subsection 552.270–35, System for Award Management—Leasing.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

GSA has approximately 8,000 leases in total. Approximately 70 percent of leasing entities were small entities. This information is based on internal inventory data sources.

GSA does not expect this rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601. This rule reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer, and does not implement new or changed requirements.

The rule involves reporting and recordkeeping that are currently covered under OMB Control Number 9000–0189, *Certain Federal Acquisition Regulation Part 4 Requirements*. This rule does not include any new reporting, recordkeeping, or other

compliance requirements for small business entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0189, *Certain Federal Acquisition Regulation Part 4 Requirements*.

List of Subjects in 48 CFR Parts 501, 552, and 570

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA is amending 48 CFR parts 501, 552, and 570 as set forth below:

- 1. The authority citation for 48 CFR parts 501, 552, and 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

- 2. In section 501.106, amend table 1 by adding in numerical order an entry for “552.270–35”.

The addition reads as follows:

501.106 OMB Approval under the Paperwork Reduction Act.

* * * * *

TABLE 1 TO 501.106

GSAR reference	OMB control No.
* * *	* *
552.270–35	9000–0189
* * *	* *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. Add section 552.270–35 to read as follows:

552.270–35 System for Award Management—Leasing.

As prescribed in 570.702, insert the following provision:

System for Award Management—Leasing (12/2024)

(a) *Definitions.* As used in this provision—

Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

Registered in the System for Award Management (SAM) means that—

(i) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM;

(ii) The Offeror has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(iii) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(iv) The Government has marked the record “Active”.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM at time of award, and shall maintain registration in SAM during contract performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which the entity is commonly recognized.

(3) Company physical street address, city, state, and Zip Code.

(4) Company mailing address, city, state and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company headquarters name and address (reporting relationship within the entity).

(d) If the Offeror does not become registered in the SAM database in the

time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of the solicitation. See <https://www.sam.gov> for information on registration.

(End of provision)

Alternate I (12/2024).As prescribed in 570.702, substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) An Offeror is required to be registered in SAM as soon as possible. If registration is not possible prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY**570.701 [Amended]**

■ 4. In section 570.701 amend the table in paragraph (a), in the second column, by removing the entry “52.204–7 System for Award Management.”

■ 5. Amend section 570.702 by adding in numerical order and entry for “552.270–35” to read as follows:

570.702 GSAR solicitation provisions.

* * * * *

552.270–35 System for Award Management—Leasing (in lieu of FAR 52.204–7).

Use Alternate I of the provision for procurements not providing for full and open competition due to unusual or compelling urgency.

[FR Doc. 2024–25967 Filed 11–14–24; 8:45 am]

BILLING CODE 6820–61–P

Proposed Rules

Federal Register

Vol. 89, No. 221

Friday, November 15, 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.

POSTAL SERVICE

39 CFR Part 121

Service Standards for Market-Dominant Mail Products

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service seeks public comment on proposed revisions to the service standards for certain market-dominant mail products. The Postal Service proposes to restructure the service standards, such that service standards for domestic First-Class Mail would retain the current day range of 1–5 days (as well as the current 0–1 days for USPS Connect® Local), while being calculated, with certain exceptions, as the sum of delivery days accruing across three successive operational legs reflecting end-to-end service from an originating 5-digit ZIP Code to a destinating 5-digit ZIP Code. The proposed rule would also partially adjust the service standards for end-to-end Periodicals, USPS Marketing Mail, and Package Services so that they would all be primarily based on the standards for First-Class Mail, consistent with the Postal Service's implementation of a more integrated network, thus continuing our efforts to eliminate our legacy network that, due to its poor design, has multiple, redundant network flows. In particular, the proposed service standards align with operational initiatives that the Postal Service plans to implement on a nationwide basis to fundamentally transform our processing and transportation networks to achieve greater operational precision and efficiency, significantly reduce costs, and enhance service pursuant to the *Delivering for America* strategic plan ("Plan"). The Postal Service is required by law to provide prompt, reliable, and efficient universal postal services in a financially self-sufficient manner, through an integrated network for the delivery of mail and packages at least

six days a week. However, the Postal Service currently is not achieving the requirements of the statute, as we lack a network that enables the integrated movement of mail and packages in a precise, efficient, and cost-effective manner. The Postal Service network has not been appropriately adjusted to account for volume and mail mix changes, including the substantial decline in Single-Piece First-Class Mail and increase in package volume, leading to significant inefficiencies. These initiatives will comprehensively transform these operations to fix the problems that exist today and create a network that enables the integrated movement of mail and packages in a precise and cost-effective manner far into the future. These initiatives would lead to a net positive impact for First-Class Mail from a service standard perspective, and generally faster service for end-to-end USPS Marketing Mail, Periodicals, and Package Services. They will also lead to substantial cost savings (estimated at between \$3.6 to \$3.7 billion annually), which is critical given the Postal Service's current poor financial condition, which can be addressed only through comprehensive changes to reduce costs and increase efficiency (in conjunction with the other elements of the Plan). Further details of the proposed changes appear below.

DATES: Comments must be received on or before December 31, 2024.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–3436. Email comments, containing the name and address of the commenter, may be sent to: PCFederalRegister@usps.gov, with a subject line of "Service Standards for Market-Dominant Mail Products." Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review Monday through Friday, 9 a.m. and 4 p.m. by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT:

Martha Johnson, Senior Public Relations Representative, at martha.s.johnson@usps.gov or (202) 268–2000.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Postal Service proposes to amend 39 CFR part 121 to revise the current service standards for certain market-dominant products. These revisions achieve the objectives set forth in 39 U.S.C. 3691(b), taking into account the factors of 39 U.S.C. 3691(c). Overall, they further the Postal Service's obligations under 39 U.S.C. 101 and other provisions of Title 39 of the U.S. Code to provide universal postal services in a prompt, reliable, and efficient manner. The Postal Service is required by law to provide universal postal services in a financially self-sufficient manner, through an integrated network for the delivery of mail and packages at least six days a week. The Postal Service currently is not financially self-sufficient, and also lacks a network that is conducive to the logical, efficient, cost-effective, and reliable movement of mail and packages in an integrated manner from origin to destination in the modern postal environment, taking into account the current and projected volume and product mix. By implementing these operational initiatives and the proposed standards with which they are aligned, the Postal Service would be able to better balance and achieve these statutory policies and achieve the goals of the Plan to create a high-performing, financially sustainable organization.

The current standards for First-Class Mail lead to high costs and inefficiencies in the transportation and processing network, and are not conducive to providing reliable and consistent service. The Postal Service is adjusting the service standards to improve our capability to deliver mail reliably and predictably for Postal Service customers, while enhancing the ability to increase operational efficiency and effectiveness consistent with best business practices. These standards would allow the Postal Service to better meet customer needs for prompt and reliable service, while supporting the maintenance of reasonable postage rates.

Before describing how service standards would be revised, it is important to understand how service

standards are structured in Postal Service regulations. Service standards contain two components: (1) a delivery day range within which mail in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the ZIP Code prefixes associated with the piece's point of entry into the mail stream and its delivery address. As noted above, the Postal Service proposes to restructure the service standards for domestic First-Class Mail, with certain exceptions, as the sum of delivery days accruing across three successive operational legs reflecting end-to-end service from an originating 5-digit ZIP Code to a destinating 5-digit ZIP Code. Leg 1 begins with collection and ends with acceptance at the applicable originating processing facility. Leg 2 begins with acceptance at the originating processing facility and ends with acceptance at the applicable destinating processing facility. Leg 3 begins with acceptance at the destinating processing facility and ends with delivery.

With respect to Leg 1, the Postal Service intends to redesign regional transportation (routes between processing facilities, Post Offices, and delivery units) through the Regional Transportation Optimization (RTO) initiative to address the significant inefficiencies that exist in local and regional transportation networks and to ensure service reliability and cost efficiency. With respect to Leg 2, the Postal Service intends to systematically redesign and invest in our outmoded processing facilities to create a network of Regional Processing and Distribution Centers or Campuses (RPDCs) and Local Processing Centers (LPCs), which deploy standardized and logically sequenced operating plans and schedules for the movement of mail and packages, more sortation equipment, optimized transportation routes, and improved operating tactics to increase throughput, gain productivity, and increase asset utilization across the country.

The Postal Service is proposing to revise service standards for end-to-end market-dominant products to align with our operational initiatives; these standards would be more operationally precise and specific for customers, enable the Postal Service to maintain or upgrade service standards for a majority of volume, and enhance the ability to reliably achieve standards. In particular, the Postal Service plans to reimagine how service standards are established

by breaking that service into segments so that customers have clear, understandable, and logical information about the service provided to them from a 5-digit to 5-digit ZIP Code perspective.

For First-Class Mail, the existing day ranges would be preserved, meaning all mail would continue to be delivered within the existing day range of 1–5 days (as well as the current range of 0–1 days for USPS Connect® Local). For some end-to-end products within the contiguous 48 states (Periodicals, USPS Marketing Mail, and Package Services), the maximums for those day ranges would be shortened. (Unless specified otherwise, references in this document to the “contiguous states” or the “contiguous 48 states” include the District of Columbia.) No destination entry product standards would be changed, except to reflect the new RPDC/LPC network. Overall, most mail and packages in the contiguous 48 states would either receive the same service standard or an accelerated standard so that they are delivered faster than today, while some mail and packages under the new standards would have a service expectation that is longer than the current expectation but still within the current day-ranges.

Specifically, current First-Class Mail standards are predicated solely on plant-to-plant (3-digit ZIP Code to 3-digit ZIP Code) driving distances. The proposed rule would transition to 5-digit to 5-digit ZIP Code service standards that maintain the existing delivery day ranges while, for inter-RPDC volume, accurately and logically reflecting the three operational legs applicable to the movement of mail and packages: collection to origin processing facility (Leg 1), origin processing facility to destination processing facility (Leg 2), and destination processing facility to delivery (Leg 3). Distinct rules would apply to intra-RPDC volume (that is, First-Class Mail volume that originates and destines in the same RPDC region), as well as certain intra-LPC volume.

Because the current standards are predicated on plant-to-plant driving distances, they do not consider the regional and local transportation operations necessary to transport mail and packages from where they are collected to the processing network: that is, within a particular 3-digit ZIP Code, a mailpiece that originates at a Post Office that is 300 miles from the processing facility in which the mailpiece is dispatched to the network has the same standard as a mailpiece that originates 20 miles from that processing facility (if they are going to the same destination 3-digit ZIP Code).

To meet the constraints imposed by this current approach to service standards, the Postal Service must structure our transportation network to ensure that all originating mail gets to the processing network on the day it is collected from customers, no matter how far away from the processing network it is entered. This leads to significant inefficiencies in our regional transportation practices, because the Postal Service must conduct separate trips to drop-off destinating volume from the processing network to collection/delivery facilities in the morning (AM drop-off) and pick-up originating volume from the collection/delivery facilities to the processing network in the afternoon (PM collections), or alternatively pay Highway Contract Route (HCR) contractors to layover for multiple hours between the AM and PM legs of their routes.

While this practice of separating drop-off and pick-up activities may have made sense in a different era where the volume of single-piece letter mail was much greater, it engenders costs and inefficiencies impossible to justify in today's environment. Overall, the current practice results in inefficient transportation—characterized by excessive trips, poor utilization of truck capacity, and excess carbon emissions. In addition, the current practice reduces the efficiency and reliability of our Leg 2 operations (processing and network transportation), because the need to wait for the volume from outlying collection/delivery facilities to arrive at the processing plant on the PM transportation creates a volume arrival profile which reduces efficiencies, requires the scheduled dispatch to the network to be later, and increases the likelihood either for the scheduled dispatch to leave late in order to wait for all of the mail and packages to arrive at the plant and be processed, or for mail and packages to not make the scheduled dispatch at all because it does not make it to the plant on time to be processed on that day given the compressed processing window. This impacts not only the efficiency and velocity of originating operations, but can also have substantial negative downstream effects that reduce our service performance for all volume.

With respect to Leg 1, the Postal Service proposes the nationwide implementation of RTO, for mail originating in the contiguous states, to correct for these inefficiencies. Pursuant to RTO, the Postal Service will have the ability to structure transportation routes that go to facilities that are farther from the processing network so that trucks would pick up originating volume on

the same routes that are also used to drop off destination volume. The RTO initiative rationalizes the regional transportation network by eliminating routes and increasing truck utilization and thereby reduces transportation costs and the amount of carbon emissions. It also improves the efficiency and velocity of the processing network by producing volume arrival profiles that are spread more evenly throughout the day, enabling a more effective use of network resources and allowing the Postal Service to dispatch volume that is entered closer to processing plants (which is a majority of volume) earlier than is the case today. The Postal Service will designate 5-digit ZIP Codes for RTO when a retail/collection facility within that 5-digit ZIP Code is more than 50 miles from the RPDC campus. Exceptions to this 50-mile rule may be implemented under certain circumstances based on operational or business considerations.

The proposed standards will more logically and accurately reflect our operations within Leg 1 and enable the implementation of the RTO initiative, thereby giving the Postal Service the ability to optimize our regional and local transportation. Specifically, and as part of the proposed shift from the 3-digit to 3-digit ZIP Code standards to a more refined service calculation based on 5-digit ZIP Codes, the service standards will explicitly accommodate the fact that mail and packages entered the prior day would under RTO be picked up on the next day's transportation route for certain ZIP Codes. Mailpieces entered in ZIP Codes subject to RTO would therefore have one day assigned for Leg 1 in the service standards; zero days will apply in Leg 1 to pieces originating in other 5-digit ZIP Codes not subject to RTO. Implementing this change is the only way to correct for the significant deficiencies of the current network, while also ensuring that the standards set forth are achievable, reliable, and understandable service expectations for customers.

With respect to Leg 2, the proposed standards reflect the increased efficiency, velocity, and reach of our processing and network transportation due to the operational benefits of the RPDC/LPC redesign and RTO. As noted above, the network of RPDCs and LPCs will deploy standardized and logically sequenced operating plans and schedules, more sortation equipment, optimized transportation routes, and improved operating tactics to increase throughput, gain productivity, and increase asset utilization across the country. In addition, RTO enables more

efficient and accelerated originating processing operations, therefore allowing volumes to enter the network earlier. As a result of these benefits, the Postal Service is proposing to expand by four hours each of the existing service standard bands within Leg 2 for First-Class Mail so that such mail can travel farther to plants that are a greater distance from the originating plant within the Leg 2 bands.

Finally, while the Postal Service is recognizing Leg 3 in our First-Class Mail standards, no additional days are being added for this leg, which is the same as the current standards.

These proposed adjustments to the service standards would lead to a net positive impact for First-Class Mail from a service standard perspective, and generally faster service for end-to-end USPS Marketing Mail, Periodicals, and Package Services. The proposed service standards reflect the fact that the operational changes will enable volume to be accelerated through Leg 2, due to the benefits of the new network design and RTO; as a result, the Leg 2 bands for First-Class Mail will be expanded by four hours compared to the current standards. All volume would benefit from greater service reliability. Some mail and packages (constituting a minority of volume) in the contiguous states would experience a service standard that is longer than the current service standard (although still within the current day ranges), primarily because the Postal Service would assign one day within Leg 1 for all volume originating in a 5-digit ZIP Code that is subject to the RTO, as described below. In addition, as a result of the overall changes, a small volume of mail and packages to and/or from locations outside the contiguous states would experience a service standard that is longer than the current service standards, while other volume outside the contiguous states would experience a service standard that is shorter than the current service standards. The relative upgrades and downgrades demonstrate the Postal Service's efforts to maintain high quality service and mitigate any customer impacts to the extent possible, while also implementing operational changes necessary to achieve the critical—and significant—cost savings that are necessary for financial sustainability.

The proposed service standards are a critical aspect of the Plan's overall goals to create a financially sustainable and reliable Postal Service capable of achieving our universal service mission for all customers for years to come. In this regard, and considering the Postal Service's statutory obligations, the

proposed changes would enable the Postal Service to achieve a better balance of cost-effectiveness and reliability, by enabling the Postal Service to undertake critically necessary operational initiatives and more realistically aligning the service standards with our operational capabilities. The proposed rule would result in much more precise and efficient network operations that better match current and projected mail mix and volumes, and the Postal Service anticipates that the changes will result in significant cost savings, in addition to enhancing service reliability and predictability. This keeps costs at reasonable levels and helps to ensure affordable rates. Overall, the operational changes and associated service standards will revitalize and rationalize our network in a way that enables us to be a modern and high-performing organization.

Pursuant to 39 U.S.C. 3661(b), on October 4, 2024, the Postal Service requested an advisory opinion from the Postal Regulatory Commission relating to these proposed revisions to 39 CFR part 121; the Commission is considering the request in Docket No. N2024–1. Further explanation and justification of the operational initiatives and the proposed service standards, and how they are consistent with 39 U.S.C. 3691 and other provisions of law, can be found in the materials that the Postal Service has filed in that docket.

Finally, while the proposed changes must also be pursued with a sense of urgency, given both our financial condition and the fundamental fact that we cannot be an efficient, high-performing organization until we fix the inefficiencies of our current network, it is important to note that the Postal Service would not implement the proposed service standard changes any sooner than 90 days after the filing of the advisory opinion request noted above. As such, these proposed changes would not be implemented until the next calendar year and would therefore not impact our preparedness for peak season 2024 (and also did not impact our efforts to deliver Election Mail in a timely fashion for the 2024 General Election).

II. Proposed Revisions to Service Standards

The Postal Service's market-dominant service standards are contained in 39 CFR part 121. The specific proposed revisions to 39 CFR part 121 appear at the end of this document. The following is a summary of the proposed revisions.

A. First-Class Mail

Under the proposed rule, the process for collections would not change, nor would access to Postal Service retail services. Instead, RTO would eliminate the interdependency between the time mail is collected from our customers and network transportation schedules and plant processing schedules; eliminating this interdependency between local retail and collection operations, and our network logistics and processing operations, is critically important to enabling us to create a precise, efficient, and cost-effective network, as discussed in more detail above. ZIP Codes would be designated for RTO when a retail/collection facility within that 5-digit ZIP Code is more than 50 miles from the RPDC (though exceptions may apply). In situations where the RPDC is a campus, the 50-mile rule will be based on the location of the specific facility that performs cancellation operations. The proposed rule generally would add no day for Leg 1 for ZIP Codes within 50 miles from the RPDC campus and would add one day to the service standard for ZIP Codes that are more than 50 miles from the originating RPDC. This would allow for more efficient and flexible transportation schedules and improve the arrival profile for mail processing operations, enabling the Postal Service to more timely dispatch the volume that is collected closer to the RPDC to the Leg 2 transportation network.

This logic would generally apply to all end-to-end volume across market-dominant products. Because Leg 1 is the portion of operations from collection to the originating plant, this rule would not apply to any products entered at an RPDC, Presort First-Class Mail, or any destination-entered volume. For operational efficiency, the Postal Service is considering how to adjust when and where Presort First-Class Mail volume may be entered to ensure that it is not subject to RTO. This may result in specification of locations where Presort First-Class Mail can be entered, or changing the critical entry time (CET) for Presort First-Class Mail to ensure there is sufficient time for volume to enter the network. The CET is the latest time on a particular day that a mail piece can be entered into the postal network and still have its service standard calculated based on that day (this day is termed “day-zero”); all of the service standards are contingent upon proper acceptance before the applicable CET.

RTO would provide flexibility in regional transportation scheduling, as the standards would accommodate the

fact that mail and packages could under RTO be picked up the next day from the Post Office on the same trip that also dropped off mail at that Post Office for delivery that day. Explicitly accounting for this operational practice in the service standards enables the Postal Service to achieve the benefits of RTO, while also providing customers with more precise and reliable service expectations. Additionally, by no longer requiring all mail to wait for the volumes collected from the furthest away Post Offices, the Postal Service would be able to accelerate the mail that is within the 50-mile radius of an RPDC through mail processing, allowing for it to be dispatched to the network earlier, thus enabling the expansion of the Leg 2 service standard bands. As such, the addition of a day for Leg 1 would not necessarily equate to the addition of a day for the service standard overall for a given mailpiece. Rather, the service standard for a particular mailpiece would depend on the specific origin and destination and the cumulative number of days that are applicable across the operational segments (with no First-Class Mail having a service standard that exceeds five days).

Under the proposed rule for First-Class Mail, there are several fundamental changes to the calculation of service standards at Leg 2 to align with the end-state RPDC network. First, the measured transit path would be updated. The current network path used for measurement is Origin Processing and Distribution Center or Facility (OPDC/F) to Area Distribution Center (ADC) to Sectional Center Facility (SCF). The proposed rule would instead measure the distance between the Originating RPDC and the Destination RPDC and then the distance between the Destination RPDC to the Destination LPC.

Second, because of the improved arrival profiles facilitated by RTO and the improved efficiencies in the RPDC network, under the proposed rule, each of the existing service standard bands would expand by four hours for First-Class Mail. For example, under the current standards, First-Class Mail traveling three hours or less receives a 2-day standard. Under the proposed changes, First-Class Mail traveling up to seven hours (*i.e.*, the current three hours, plus four more hours) would receive a 2-day standard. The bands applicable to the assignment of 3-day and 4-day standards within Leg 2 will also expand by four hours each.

Finally, even for pairs of originating and destinating 5-digit ZIP Codes where the application of the Leg 1 and Leg 2 rules noted above would otherwise

result in a 6-day standard, the standard would nonetheless be capped at five days for such pairs.

This segment-by-segment approach applies to inter-RPDC volume (*i.e.*, volume that is moving across the network). Specific rules will apply to mail and packages originating and destinating within the same RPDC region (intra-RPDC volume). Specifically, the proposed service standards would expand the geographic scope of such “turnaround” volume, which is volume originating and destinating within a facility’s service area. Currently, certain intra-SCF volume receives a 2-day standard. Under the proposed rule, certain intra-LPC and all intra-RPDC First-Class Mail volume would be subject to a new turnaround rule, which would provide for a 2- or 3-day standard, depending on the location of the originating mail volume. Specifically, processing facilities that cancel Single-Piece First-Class Mail on automated equipment would have a 2-day standard for turnaround Single-Piece First-Class Mail originating from 5-digit ZIP Codes within 50 miles of the cancellation location. By contrast, if certain originating volume is from a 5-digit ZIP Code beyond 50 miles of the cancellation location, the turnaround standard for Single-Piece First-Class Mail would be three days. The decision on which LPCs would maintain cancellation operations for Single-Piece First-Class Mail, and thus process local turnaround mail without transporting it to an RPDC, would be based on operational factors, such as distance from the RPDC to the LPC, and the volume of turnaround mail processed at the LPC. In situations in which the LPC retains cancellation operations, the 50-mile rule noted above will be based on the distance from the LPC. In other situations, the RPDC will have cancellation operations, meaning the 50-mile rule will be based on the distance from the RPDC.

Currently, a 1-day service standard is applied to intra-SCF domestic Presort First-Class Mail pieces properly accepted at the SCF before the day-zero CET. To account for the redesigned network, a 1-day service standard would instead apply to eligible intra-LPC Presort First-Class Mail pieces properly accepted at the LPC before the day-zero CET. On the other hand, for eligible Presort First-Class Mail within the contiguous 48 states that is not eligible for the intra-LPC 1-day standard, but that nevertheless originates and destines within the same RPDC, a 2-day service standard would apply.

RTO would not apply to originating locations outside of the contiguous 48 states; also, the service standards for domestic First-Class Mail originating and/or destinating in such locations would not necessarily depend on the segment-by-segment network path. As a result, service standards for domestic First-Class Mail originating and/or destinating in such locations would generally not change; an exception, for example, would be application of RTO to domestic Single-Piece First-Class Mail that (1) originates in the contiguous 48 states, (2) is collected in and dispatched from a 5-digit ZIP Code that is over 50 miles in driving distance from the originating RPDC, and (3) destines in the city of Anchorage, Alaska (5-digit ZIP Codes 99501 through 99539), the 968 3-digit ZIP Code area in Hawaii, or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico. Nevertheless, notwithstanding application of RTO generally for domestic First-Class Mail that meets these conditions, a maximum 5-day service standard would be applied.

A same-day service standard will continue to apply to USPS Connect® Local Mail pieces accepted at participating Destination Delivery Units (DDUs) before the applicable day-zero CET; for USPS Connect® Local Mail, Sorting & Delivery Centers are also considered DDUs. A 1-day service standard will continue to apply to all other pieces accepted as USPS Connect® Local Mail, including pieces accepted via carrier pick-up.

The proposed rule would also have certain effects on standards for international mail. As a result of the proposed application of 5-digit to 5-digit ZIP Code pairs, the service standard for outbound Single-Piece First-Class Mail International pieces properly accepted before the day-zero CET would be equivalent to the service standard for domestic First-Class Mail pieces originating from the same 5-digit ZIP Code area and destined to the 5-digit ZIP Code area in which the designated International Service Center is located. Similarly, the service standard for Inbound Letter Post pieces properly accepted before the day-zero CET would be equivalent to the service standard for domestic First-Class Mail pieces destined to the same 5-digit ZIP Code area and originating from the 5-digit ZIP Code area in which the applicable International Service Center is located. Because Inbound Parcel Post (at Universal Postal Union (UPU) rates) includes Inbound Surface Parcel Post (at UPU rates), and because that product is now competitively classified, the proposed rule would remove it from

these market-dominant service standards.

B. Periodicals, USPS Marketing Mail, and Package Services

Service standards for end-to-end Periodicals and USPS Marketing Mail originating and destinating in the contiguous 48 states would generally flow from the Single-Piece First-Class Mail standards using the same measured travel path (disregarding standards for USPS Connect® Local Mail and for intra-LPC “turnaround” service). For Periodicals, the general rule in relation to First-Class Mail would remain the same—*i.e.*, a 3–6-day range would be applied to Periodicals, with the standard generally equaling the sum of the applicable First-Class Mail service standard (disregarding standards for USPS Connect® Local Mail and for intra-LPC “turnaround” service) plus one day. For USPS Marketing Mail, the rule would add two days to the applicable First-Class Mail service standard (disregarding standards for USPS Connect® Local Mail and for intra-LPC “turnaround” service). This means that the outer-bound for USPS Marketing Mail in the contiguous states would be seven days, rather than ten days under the current standards. For end-to-end Package Services within the contiguous 48 states, the rule would add two days to the First-Class Mail standards, after 5–9 hours of Leg 2 driving time is added to the applicable First-Class Mail service band; overall, this would reduce the outer-bound of the service standards for Package Services in the contiguous states to seven days, rather than the current eight days.

With respect to Destination Entry Periodicals, Destination Entry USPS Marketing Mail, and Destination Entry Package Services, the service standards generally would not change, except to reflect the new network. That is, to correspond with the operational network and infrastructure changes that the Postal Service is implementing, the LPCs would replace the ADCs and the SCFs in the service standards. Likewise, the RPDCs would replace the Network Distribution Centers (NDCs) in the service standards. These changes would allow some Destination Entry Periodicals to receive an accelerated service standard, in part because it will no longer matter in this respect whether Destination ADCs (DADCs) and Destination SCFs (DSCFs) are co-located, given that they are both being replaced by Destination LPCs (DLPCs).

Under the proposed rule, for Destination Entry Periodicals originating and/or destinating in

locations outside of the contiguous 48 states, service standards would largely remain unchanged, aside from facility nomenclature updates reflecting the network redesign, with certain exceptions. A small volume of mail to and/or from locations outside the contiguous states would experience a service standard that is longer than the current service standards, while some other volume outside the contiguous states would experience a service standard that is shorter than the current service standards. Currently, for example, a 3-day service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if they are entered at the DSCF in Puerto Rico and destined to the U.S. Virgin Islands, or destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999; on the other hand, currently a 4-day service standard is applied to Periodicals pieces that qualify for a DADC rate and are properly accepted before the day-zero CET at the designated DADC, if they are entered at the DADC in Puerto Rico and destined to the U.S. Virgin Islands, or if they are destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999. Since LPCs would replace ADCs, and since DLPC service standards would largely track those currently applied to DSCF volume, for such mail, the shorter of the two service standards (*i.e.*, 3-day) would apply to Periodicals pieces that qualify for a DLPC rate and are properly accepted before the day-zero CET at the designated DLPC, if they are entered at the DLPC in Puerto Rico and destined to the U.S. Virgin Islands, or destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

Furthermore, a 3-day service standard is currently applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if they are entered at the DSCF in Hawaii and are destined to American Samoa; on the other hand, currently a 4-day standard applies to Periodicals pieces that qualify for a DADC rate, are properly accepted before the day-zero CET at the designated DADC, and are destined to American Samoa. For reasons of operational feasibility, under the proposed rule, a 4-day service standard would be applied to Periodicals pieces

that qualify for a DLPC rate and are properly accepted before the day-zero CET at the designated DLPC, if they are destined to American Samoa.

Finally, as the service standards themselves have been simplified, the tables depicting day-ranges for non-contiguous states and territories at the end of Part 121 (Tables 2 and 4) likewise have been streamlined. Table 2 reflects the general standards for end-to-end day-ranges for the non-contiguous states and territories, including exceptions for some intermodal transportation. Table 4 reflects the general standards for destination entry day-ranges for the non-contiguous states and territories, including consolidated day-ranges resulting from LPCs and RPDCs superseding SCFs, ADCs, and NDCs.

III. Request for Comments

The Postal Service requests comments on all aspects of the proposal. In particular, the Postal Service solicits comments on the effects that the proposal could have on senders and recipients of the affected market-dominant mail classes. Mail users are encouraged to comment on the nature and extent of costs or savings they might experience as a result of the changes described in this document, as well as any additional possible costs or benefits they foresee, such as increased reliability and predictability. The provision of empirical data supporting any cost-benefit analysis also would be useful. Further, the Postal Service requests mail users' views regarding the application of the policies and requirements of Title 39 of the U.S. Code, particularly sections 101, 403, 404, and 3691, to the proposal. The Postal Service intends to consider comments received in response to this document as it determines whether to amend the service standard regulations and the manner in which any such amendments would be implemented. The Postal Service has also requested an advisory opinion from the Postal Regulatory Commission pursuant to 39 U.S.C. 3661(b).

Although exempt from the document and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the proposed revisions to 39 CFR part 121 and on the proposal generally. A more extensive discussion of the proposal and its associated network and service implications is available in the materials filed by the Postal Service with the Postal Regulatory Commission in Docket No. N2024–1, at <http://www.prc.gov>. If the Postal Service

determines to implement the proposal, it will publish a final rule in the **Federal Register**. In any event, these service standard changes would not be implemented prior to 2025.

List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR part 121 as follows:

PART 121—SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 2. Add § 121.0 to read as follows:

§ 121.0 Market-dominant product service standards.

Service standards in this part are contingent upon proper acceptance before the applicable day-zero Critical Entry Time (CET). Applying the service standards appearing in this part, effective service standards for combinations of 5-digit originating ZIP Codes and 5-digit destinating ZIP Codes can be found in a lookup table at www.usps.com.

■ 3. Revise § 121.1 to read as follows:

§ 121.1 First-Class Mail.

(a) *Service Standards Based on Delivery Legs Within the Contiguous 48 States* Except as specified in paragraph (b), service standards for domestic First-Class Mail, whose origin and destination are within the contiguous 48 states, are calculated as the sum of service expectation days between 5-digit ZIP Code pairs, accruing across three successive legs as follows:

(1) *Leg 1.* Unless an exception applies due to operational or business considerations, for this leg (i) one service expectation day is added to First-Class Mail (excluding eligible Presort First-Class Mail) originating in a 5-digit ZIP Code when a facility from which mail is dispatched for the originating 5-digit ZIP Code is over 50 miles in driving distance from the originating Regional Processing and Distribution Center or Campus (RPDC), and (ii) zero service expectation days are added for all other First-Class Mail, including Single-Piece First-Class Mail when no facility from which mail is dispatched for the originating 5-digit ZIP Code is over 50 miles in driving distance from the originating RPDC, and

including eligible Presort First-Class Mail.

(2) *Leg 2.* (i) Two service expectation days are added to First-Class Mail if the combined drive time between the originating RPDC, the destinating RPDC, and the destinating Local Processing Center (LPC) is 7 hours or less;

(ii) Three service expectation days are added to First-Class Mail if the combined drive time between the originating RPDC, the destinating RPDC, and the destinating LPC is more than 7 hours and not more than 24 hours;

(iii) Four service expectation days are added to First-Class Mail pieces if the combined drive time between the originating RPDC, the destinating RPDC, and the destinating LPC is more than 24 hours and not more than 45 hours; and

(iv) Five service expectation days are added to all remaining First-Class Mail pieces, except that four days are added to any such First-Class Mail for which a day is added under Leg 1.

(3) *Leg 3.* No service expectation days are added in Leg 3.

(b) *Exceptions to Service Standards Based on Delivery Legs Within the Contiguous 48 States.* (1) A same-day service standard applies to USPS Connect® Local Mail pieces accepted at participating Destination Delivery Units, and a one-day service standard applies to all other pieces accepted as USPS Connect® Local Mail.

(2) A one-day service standard applies to eligible intra-LPC Presort First-Class Mail pieces accepted at the LPC.

(3) For First-Class Mail that is not USPS Connect® Local Mail, with respect to “turnaround” service for pieces originating and destinating within the same RPDC service area or within the same LPC service area for certain qualifying LPCs (designated by the Postal Service based on operational considerations such as an LPC’s distance from its servicing RPDC and volume processed at the LPC):

(i) A two-day service standard applies to:

(A) Eligible Presort First-Class Mail that is not eligible for a one day service standard under paragraph (2) and that originates and destines in the same RPDC service area; and

(B) Single-Piece First-Class Mail originating in a 5-digit ZIP Code when no facility from which mail is dispatched for the originating 5-digit ZIP Code is over 50 miles in driving distance of the originating RPDC or qualifying LPC and destines within the same RPDC’s or qualifying LPC’s service area.

(ii) A three-day service standard applies to Single-Piece First-Class Mail originating in a 5-digit ZIP Code when

a facility from which mail is dispatched for the originating 5-digit ZIP Code is over 50 miles in driving distance of the originating RPDC or qualifying LPC and destinations within the same RPDC's or qualifying LPC's service area.

(c) *Service Standards for Domestic First-Class Mail Originating and/or Destinating in Locations Outside of the Contiguous 48 States.* (1) A same-day service standard applies to USPS Connect® Local Mail pieces accepted at participating Destination Delivery Units.

(2) Except as provided in paragraph (3), a one-day service standard applies to:

(i) Eligible intra-LPC Presort First-Class Mail pieces accepted at the LPC, whose origin and destination are outside the contiguous 48 states; and

(ii) All other pieces accepted as USPS Connect® Local Mail.

(3) A two-day service standard applies to:

(i) Eligible Presort First-Class Mail that originates in Puerto Rico and destinations in the U.S. Virgin Islands, or vice versa;

(ii) Eligible intra-LPC Presort First-Class Mail with an origin or destination that is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999; and

(iii) Other intra-LPC First-Class Mail pieces whose origin and destination are outside the contiguous 48 states, including any other intra-LPC Presort pieces that are not eligible for a one-day service standard.

(4) A four-day service standard applies to First-Class Mail pieces if the same-day, one-day, or two-day service standards do not apply and:

(i) The origin is in the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico, and the destination is in the contiguous 48 states;

(ii) The origin is in Hawaii, and the destination is in Guam, or vice versa;

(iii) The origin is in Hawaii, and the destination is in American Samoa, or vice versa;

(iv) Both the origin and destination are within Alaska; or

(v) Such mail originates in a 5-digit ZIP Code where no facility from which mail is dispatched for that 5-digit ZIP Code is over 50 miles of driving distance from its originating RPDC, and the origin is in the contiguous 48 states and the destination is in the city of Anchorage, Alaska (5-digit ZIP Codes 99501 through 99539), the 968 3-digit ZIP Code area in Hawaii, or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico.

(5) A five-day service standard applies to all remaining domestic First-Class Mail pieces originating and/or destinating outside the contiguous 48 states.

(d) *Service Standards for International First-Class Mail.* (1) The service standard for Outbound Single-Piece First-Class Mail International® pieces is equivalent to the service standard for domestic Single-Piece First-Class Mail pieces originating from the same 5-digit ZIP Code area and destined to the 5-digit ZIP Code area in which the designated International Service Center, or its functional equivalent, is located.

(2) The service standard for Inbound Letter Post pieces from the first USPS scan is equivalent to the service standard for domestic Single-Piece First-Class Mail pieces destined to the same 5-digit ZIP Code area and originating from the 5-digit ZIP Code area in which the applicable International Service Center, or its functional equivalent, is located.

■ 4. Revise § 121.2 to read as follows:

§ 121.2 Periodicals.

(a) *End-to-End.* (1) Except as provided in paragraph (2), a 3- to 6-day service standard applies to end-to-end Periodicals pieces, with the standard generally equaling the sum of one day plus the applicable Single-Piece First-Class Mail (FCM) service standard (disregarding standards for USPS Connect® Local FCM and for intra-Local Processing Center “turnaround” service).

(2) For certain end-to-end Periodicals pieces originating and/or destinating outside the contiguous 48 states, a 10- to 27-day service standard applies, with the standard generally equaling the sum of 3 to 6 days plus the number of additional days (from 7 to 21) for which certain intermodal (e.g., highway, boat, air-taxi) transportation is utilized.

(b) *Destination Entry.* (1) *Destination Delivery Unit (DDU) Entered Mail.* A 1-day (overnight) service standard applies to Periodicals pieces that qualify for a DDU rate.

(2) *Destination Local Processing Center (DLPC) Entered Mail.* (i) A 1-day (overnight) service standard applies to Periodicals pieces that qualify for a DLPC (or analogous legacy) rate, except for mail entered in Puerto Rico and destined to the U.S. Virgin Islands, mail destined to American Samoa, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(ii) A 3-day service standard applies to Periodicals pieces that qualify for a

DLPC (or analogous legacy) rate, if they are entered in Puerto Rico and destined to the U.S. Virgin Islands, or if they are destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(iii) A 4-day service standard applies to Periodicals pieces that qualify for a DLPC (or analogous legacy) rate if they are destined to American Samoa.

(3) *Destination Regional Processing and Distribution Center or Campus (DRPDC) Entered Mail.* (i) A 2-day service standard applies to Periodicals pieces that qualify for a DRPDC (or analogous legacy) rate, are entered in the contiguous 48 states, and are destined within the contiguous 48 states;

(ii) An 8- to 10-day service standard applies to Periodicals pieces that qualify for a DRPDC (or analogous legacy) rate, are entered in the contiguous 48 states, and are destined outside the contiguous 48 states, with the specific standard being based on the number of days required for transportation outside the contiguous 48 states.

■ 5. Revise § 121.3 to read as follows:

§ 121.3 USPS Marketing Mail.

(a) *End-to-End.* (1) Except as provided in paragraph (2), a 4- to 7-day service standard applies to end-to-end USPS Marketing Mail pieces, with the standard generally equaling the sum of 2 days plus the applicable Single-Piece First-Class Mail (FCM) service standard (disregarding standards for USPS Connect® Local FCM and for intra-Local Processing Center (LPC) “turnaround” service).

(2) For certain end-to-end USPS Marketing Mail pieces originating and/or destinating outside the contiguous 48 states, an 11- to 28-day service standard applies, with the standard generally equaling the sum of 4 to 7 days plus the number of additional days (from 7 to 21) for which certain intermodal (e.g., highway, boat, air-taxi) transportation is utilized.

(b) *Destination Entry.* (1) USPS Marketing Mail pieces that qualify for a Destination Delivery Unit (DDU) rate have a 2-day service standard.

(2) USPS Marketing Mail pieces that qualify for a Destination Local Processing Center (DLPC) (or analogous legacy) rate have a 3-day service standard when accepted on Sunday through Thursday and a 4-day service standard when accepted on Friday or Saturday, except for mail dropped at the LPC in the territory of Puerto Rico and destined to the territory of the U.S.

Virgin Islands, or mail destined to American Samoa.

(3) USPS Marketing Mail pieces that qualify for a DLPC (or analogous legacy) rate and that are entered in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or that are destined to American Samoa, have a 4-day service standard when accepted on Sunday through Thursday and a 5-day service standard when accepted on Friday or Saturday.

(4) USPS Marketing Mail pieces that qualify for a Destination Regional Processing and Distribution Center or Campus (DRPDC) (or analogous legacy) rate have a 5-day service standard, if both the origin and the destination are in the contiguous 48 states.

(5) USPS Marketing Mail pieces that qualify for a DRPDC (or analogous legacy) rate, and that are entered in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 12–14 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

■ 6. Revise § 121.4 to read as follows:

§ 121.4 Package Services.

(a) *End-to-End.* (1) Except as provided in paragraph (2), a 4- to 7-day service standard applies to end-to-end Package Services pieces, with the standard generally equaling the sum of 2 days plus the applicable Single-Piece First-Class Mail (FCM) service standard

(disregarding standards for USPS Connect® Local FCM and for intra-Local Processing Center “turnaround” service) after adding 5–9 hours to the applicable driving time bands of Leg 2 for FCM, as applied to specific 5-digit origin-destination pairs in the table cited in section 121.0.

(2) For certain end-to-end Package Services pieces originating and/or destinating outside the contiguous 48 states, an 11- to 29-day service standard applies, with the standard generally equaling the sum of 4 to 7 days plus the number of additional days (from 7 to 22) for which certain intermodal (e.g., highway, boat, air-taxi) transportation is utilized.

(b) *Destination Entry.* (1) Package Services mail that qualifies for a Destination Delivery Unit (DDU) rate has a 1-day (overnight) service standard.

(2) Package Services mail that qualifies for a Destination Local Processing Center (DLPC) (or analogous legacy) rate has a 2-day service standard, except for mail that is destined to either American Samoa or the U.S. Virgin Islands.

(3) Package Services mail that qualifies for a DLPC rate, and that is destined to either American Samoa or the U.S. Virgin Islands, has a 3-day service standard.

(4) Package Services mail that qualifies for a Destination Regional Processing and Distribution Center or Campus (DRPDC) (or analogous legacy) rate, and that originates and destinates in the contiguous 48 states, has a 3-day service standard.

(5) Package Services mail that qualifies for a DRPDC (or analogous

legacy) rate, and that is entered in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii, or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, has a service standard of either 11 or 12 days, depending on the 3-digit ZIP Code origin-destination pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

■ 7. Revise appendix A to part 121 to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.0 through 121.4 (for purposes of Part 121, references to the contiguous states or the contiguous 48 states also include the District of Columbia):

Table 1. End-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

TABLE 1—END-TO-END SERVICE WITHIN CONTIGUOUS STATES

Mail class	End-to-end range (days)
First-Class Mail	0–5
Periodicals	3–6
USPS Marketing Mail	4–7
Package Services	4–7

Table 2. End-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

TABLE 2—END-TO-END SERVICE TO AND/OR FROM NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	End-to-end range (days)	
	Intra-state/territory	Inter-state/territory
First-Class Mail	0–5	2–5
Periodicals	3–6	3–27
USPS Marketing Mail	4–7	4–28
Package Services	* 4–7	4–29

* Excluding bypass mail.

Table 3. Destination-entry service standard day ranges for mail to the contiguous 48 states and the District of Columbia.

TABLE 3—DESTINATION ENTRY SERVICE TO CONTIGUOUS STATES

Mail class	Contiguous states		
	Destination entry (at appropriate facility) range (days)		
	* DDU	* DLPC	* DRPDC
Periodicals	1	1	2
USPS Marketing Mail	2	3–4	5

TABLE 3—DESTINATION ENTRY SERVICE TO CONTIGUOUS STATES—Continued

Mail class	Contiguous states		
	Destination entry (at appropriate facility) range (days)		
	* DDU	* DLPC	* DRPDC
Package Services	1	2	3

* DDU = Destination Delivery Unit; DLPC = Destination Local Processing Center; DRPDC = Destination Regional Processing and Distribution Center or Campus.

Table 4. Destination entry service standard day ranges for mail to non-contiguous states and territories.

TABLE 4—DESTINATION ENTRY SERVICE TO NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	Destination entry (at appropriate facility)						
	* DDU range (days)	* DLPC range (days)			* DRPDC range (days)		
		Alaska	** Hawaii, Guam, NMI, & AS	** PR & USVI	Alaska	Hawaii, Guam, NMI, & AS	PR & USVI
Periodicals	1	1–3	1–4	1–3	10–11	10	8–10
USPS Marketing Mail	2	3–4	3–5	3–5	14	13	12
Package Services	1	2	2–3	2–3	12	11	11

* DDU = Destination Delivery Unit; DLPC = Destination Local Processing Center; DRPDC = Destination Regional Processing and Distribution Center or Campus.

** AS = American Samoa; NMI = Northern Mariana Islands; PR = Puerto Rico; USVI = United States Virgin Islands.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0987; FRL–10551–01–R3]

Air Plan Approval; District of Columbia, Maryland, Virginia; Determination of Attainment by the Attainment Date and Clean Data Determination for the Washington, DC–MD–VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Washington, DC–MD–VA nonattainment area (the Washington Area or the Area) has attained the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS) by the applicable attainment date of August 3, 2024. Accompanying this proposed determination of attainment by the attainment date is a re-proposed clean data determination (CDD) under the EPA’s Clean Data Policy. If finalized, this action will address the EPA’s

obligation under Clean Air Act (CAA) sections 179(c) and 181(b)(2) to determine whether the Washington Area attained the 2015 ozone NAAQS by the August 3, 2024 attainment date and, as set forth in the EPA’s Clean Data Policy, suspend the obligation of the District of Columbia (DC), the State of Maryland (MD), and the Commonwealth of Virginia (VA) to submit certain attainment planning requirements for as long as the Area continues to attain the 2015 ozone NAAQS. As part of this rulemaking, the EPA also proposes to take final agency action on an exceptional events request submitted by the District of Columbia on March 20, 2024, and concurred on by the EPA on July 17, 2024. The proposed attainment determination and CDD are based upon the EPA’s concurrence on the exceptional events demonstration. This action is being taken under the CAA.

DATES: Written comments must be received on or before December 16, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0987 at www.regulations.gov, or via email to talley.david@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Ian Neiswinter, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2011. Mr. Neiswinter can also be reached via electronic mail at neiswinter.ian@epa.gov.

SUPPLEMENTARY INFORMATION: This proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data from 2021 to 2023 available in the EPA’s Air Quality System (AQS) database.

Neither this proposed attainment determination nor CDD redesignates the Washington Area to attainment for the 2015 ozone NAAQS. The Area remains designated nonattainment until such time as DC, MD, and VA submit a request for redesignation pursuant to 107(d)(3) of the CAA and the EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

I. Background

On October 26, 2015 (80 FR 65292), the EPA promulgated a revised primary and secondary ozone NAAQS to provide requisite increased protection of public health and welfare, respectively. In that action, the EPA strengthened both standards from 0.075 parts per million (ppm) to 0.070 ppm and retained the indicator (ozone), averaging time (8-hour), and form (annual fourth-highest daily maximum, averaged over three years) of the existing standards. Effective August 3, 2018 (83 FR 25776, June 4, 2018), the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS, including the Washington Area,¹ which was classified as a Marginal nonattainment area. This designation was based on quality-assured, quality-controlled, and certified air quality monitoring data from calendar years 2014 to 2016. The EPA established the attainment date for Marginal 2015 ozone NAAQS nonattainment areas as 3 years from the effective date of the final designations, meaning the Washington Area had an attainment date of August 3, 2021.²

Effective November 7, 2022 (87 FR 60897), the EPA determined that 22 Marginal areas or portions of areas failed to attain the standard by the applicable Marginal attainment date, including the Washington Area. In that action, the EPA reclassified the Washington Area as Moderate nonattainment for the 2015 ozone NAAQS because it failed to attain the standard by the attainment date of August 3, 2021. That designation was based on quality-assured, quality-controlled, and certified ambient air monitoring data from calendar years

2018 to 2020. In that same action, the EPA established the Moderate attainment date as August 3, 2024.³

On February 1, 2023 (88 FR 6688), the EPA proposed a CDD for the Washington Area based on quality-assured, quality-controlled, and certified ambient air quality monitoring data showing the Area attained the 2015 ozone NAAQS based on 2019 to 2021 data. The EPA did not finalize that action due to a monitored violation of the 2015 ozone NAAQS prior to final approval.⁴ On March 20, 2024, the Department of Energy and Environment (DOEE) on behalf of DC submitted an exceptional events (EE) demonstration to show that the ozone concentration recorded at the McMillan monitor (AQS Site ID #110010043) on June 29, 2023, was influenced by wildfires. The EPA concurred on this request on July 17, 2024. The EPA's Exceptional Events Rule and DOEE's exceptional events demonstration are discussed in more detail in section II of this document. Air monitoring data from 2021 to 2023, which pursuant to EPA's concurrence on the DOEE demonstration now excludes the June 29, 2023, exceptional events influenced monitor day, indicates that the Washington Area has attained the 2015 ozone NAAQS by the attainment date of August 3, 2024. In light of this supplemental information that shows continued attainment in the time following the 2023 CDD proposal, the EPA is also re-proposing a CDD for the area. The EPA is including this proposed rulemaking in the same docket as the February 1, 2023 proposed CDD for the Washington Area.⁵

II. Exceptional Events Demonstration

Congress has recognized that it may not be appropriate for the EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in the EPA's AQS database in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by "exceptional events" meeting specific criteria by adding section 319(b) to the CAA and granted the EPA with the authority to propose regulations to review and manage air quality monitoring data influenced by exceptional events.⁶

On March 22, 2007 (72 FR 13560), the EPA promulgated the 2007 Exceptional Events Rule in order to implement this 2005 CAA amendment. The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (§§ 50.1, 50.14, and 51.930). These regulatory sections, which superseded the EPA's previous guidance on handling data influenced by exceptional events, contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA's approval of the exclusion of event-affected air quality data from the data set used for regulation decisions, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances and violations of the NAAQS. On October 3, 2016 (81 FR 68216), the EPA promulgated a comprehensive revision to the 2007 Exceptional Events Rule. The 2016 Exceptional Events Rule revision included the requirement that, if a State demonstrates to the Administrator's satisfaction that emissions from a wildfire smoke event cause a specific air pollution concentration in excess of the NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of 40 CFR 50.14, the EPA must exclude that data from use in determinations of exceedances and violations.⁷

The CAA provides for the exclusion of air quality monitoring data from design value (DV) calculations when there are NAAQS exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in the EPA's Exceptional Events Rule at 40 CFR 50.1, 50.14, and 51.930. For the purposes of this proposed action, on March 20, 2024, DOEE on behalf of DC submitted an exceptional events demonstration to show that the maximum daily 8-hour average ozone concentration recorded at the McMillan monitor (AQS Site ID #110010043) on June 29, 2023, was influenced by Canadian wildfires. The EPA concurred on this request on July 17, 2024.⁸

recur at a particular location or a natural event; and (iv) is determined by the EPA under the process established in regulations promulgated by the EPA in accordance with section 319(b)(2) to be an exceptional event. For the purposes of section 319(b), an exceptional event does not include: (i) stagnation of air masses or meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance.

⁷ 40 CFR 50.14(b)(4).

⁸ As described in the EPA's letter titled "DOEE WF O3 Exceptional Events Letter RA", provided in the docket of this action, DOEE requested

¹ The Washington Area consists of the following counties/cities: Calvert County, Charles County, Frederick County, Montgomery County, and Prince George's County in Maryland; Alexandria city, Arlington County, Fairfax County, Fairfax city, Falls Church city, Loudoun County, Manassas Park city, Manassas city, Prince William County in Virginia; and all of the District of Columbia. See 40 Code of Federal Regulations (CFR) 81.309, 81.321, and 81.347.

² See 83 FR 10376 (March 9, 2018) and 40 CFR 51.1303(a).

³ See 87 FR 60897 (November 7, 2022).

⁴ The EPA initially noted this violation based on preliminary data, which was later certified.

⁵ See www.regulations.gov/search/docket?filter=EPA-R03-OAR-2022-0987.

⁶ Under CAA section 319(b), an exceptional event means an event that: (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to

The EPA found that DOE's demonstration met the Exceptional Events Rule criteria and determined that wildfire smoke events had regulatory significance for purposes of calculating the Area's most recent design value to make a determination of attainment by the attainment date and a CDD for the 2015 ozone NAAQS. As such, the EPA proposes to take final regulatory action on the concurred date, as an exceptional event to be removed from the dataset used for regulatory purposes. The rationale of the EPA's exceptional events proposal is detailed in the docket. For this proposed action, the EPA will rely on the calculated design values that exclude the event-influenced data for the purpose of demonstrating attainment of the 2015 ozone NAAQS. Further details on DOE's analyses and the EPA's concurrence, including the exceptional events initial notification, exceptional events demonstration, and the EPA's response to the initial notification can be found in the docket for this regulatory action.

While the EPA has concurred with DOE's request to exclude event-influenced air quality monitoring data from regulatory decisions, these regulatory actions require the EPA to provide an opportunity for public comment on the claimed exceptional events and all supporting data prior to the EPA taking final agency action. This proposed action provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents, and the EPA's concurrence with DOE's request.

III. Determination of Attainment by the Attainment Date and Clean Data Determination

A. Determination of Attainment by the Attainment Date

Sections 179(c)(1) and 181(b)(2)(A) of the CAA require the EPA to determine whether an ozone nonattainment area attained the ozone standard by the applicable attainment date. The EPA is required to issue this determination within six months of the attainment date. Because the ozone NAAQS is a concentration-based standard, a determination of attainment is based on a nonattainment area's DV as of the attainment date.⁹ Under the EPA

exclusion of data associated with exceptional events claims for ozone data on June 1–2, 2023, and June 29, 2023. The EPA concurred on the June 29, 2023, McMillan monitor day and deferred action on the remainder due to a lack of regulatory significance.

⁹ A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2015

regulations at 40 CFR 50.19(b) and 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.*, DV) does not exceed 0.070 ppm at each monitor site within the nonattainment area.¹⁰ Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than the year prior to the attainment date. Notably, the 2015 ozone DVs are based solely on ozone season data.¹¹ Ozone season is defined for each State or portion of a State at 40 CFR part 58, appendix D, section 4.1, table D–3. The ozone season for DC, MD, and VA runs annually from March 1st to October 31st.¹²

As such, the EPA's proposed determination for the Area is based upon the complete, quality-assured, quality-controlled, and certified ozone monitoring data from calendar years 2021, 2022, and 2023. The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's AQS database.¹³ Ambient air quality monitoring data for the 3-year period preceding the year of the attainment date must meet the data completeness requirements in appendix U, section 4(b). These completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring

ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

¹⁰ The rounding convention in 40 CFR part 50, appendix U, dictates that concentrations shall be reported in "ppm" to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a DV of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

¹¹ See 40 CFR 51.1300(b), which refers to 40 CFR part 50, appendix U.

¹² See 40 CFR 51.1300(j), which refers to 40 CFR part 58, appendix D, section 4.1, table D–3.

¹³ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, State, local, and Tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to: (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate State implementation plans for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. See www.epa.gov/aqs.

season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.¹⁴

As detailed in section III.C of this document, the EPA has evaluated the relevant data and determined that the Washington Area attained the 2015 Ozone NAAQS by the Moderate area attainment date of August 3, 2024, based on the area's 2021–2023 DV. Notably, a determination of attainment by the attainment date does not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3). Redesignations to attainment require, among other things, that the States responsible for ensuring attainment and maintenance of the NAAQS have met the applicable requirements under CAA section 110 and part D, and to submit to the EPA for approval a maintenance plan to ensure continued attainment of the standard for 10 years following redesignation, as provided under CAA section 175A.

B. Clean Data Policy and Clean Data Determinations

Following the enactment of the CAA Amendments of 1990, the EPA discussed its interpretation of the requirements for implementing the NAAQS in the "General Preamble for the Implementation of title I of the CAA Amendments of 1990" (General Preamble).¹⁵ In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, the EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS.¹⁶ Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, the EPA interprets the requirements of the CAA that are specifically designed to help an

¹⁴ As noted, the ozone season is defined for each State or portion of a State at 40 CFR part 58, appendix D, section 4.1, table D–3. The ozone season for DC, MD, and VA runs annually from March 1st to October 31st.

¹⁵ 57 FR 13498, 13564 (April 16, 1992).

¹⁶ See Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995 (1995 John S. Seitz Memo). Further description of the EPA's Clean Data Policy can be found in the "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (referred to as the Phase 2 Final Rule) (70 FR 71612, November 29, 2005). The Tenth, Seventh, and Ninth Circuit U.S. District Courts have upheld the EPA rulemakings applying the Clean Data Policy. See *Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir., June 28, 2005) memorandum opinion.

area achieve attainment, including attainment demonstrations, implementation of reasonably available control measures (RACM), reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures, to be suspended for so long as air quality continues to meet the standard.¹⁷

The EPA may issue a CDD under the EPA's Clean Data Policy when a nonattainment area is attaining the 2015 ozone NAAQS based on the most recent available data. The EPA will determine whether the area has attained the 2015 ozone NAAQS based on available information, including air quality monitoring data for the affected area. If the CDD is made final, then certain attainment plan requirements for the area are suspended for so long as the area continues to attain the NAAQS.

Furthermore, the suspension of the obligation to submit an attainment plan is only appropriate where the area remains in attainment of the NAAQS. A CDD under the Clean Data Policy does not serve to alter the area's nonattainment designation. The EPA will not take final action on the CDD for the Washington Area if the design value of a monitoring site within the Area violates the 2015 ozone NAAQS prior to final approval of the CDD. CDDs are not redesignations to attainment. As noted above, for the EPA to redesignate an area to attainment the State must submit, and the EPA must approve, a redesignation request for the area that meets the requirements of CAA section 107(d)(3).

C. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA's AQS database for the Washington Area from 2021 through 2023. That data is detailed in tables 1 through 3 of this document. On the basis of that review, the EPA has concluded that the Washington Area attained the 2015 ozone NAAQS by the applicable attainment date (August 3, 2024) based on quality-assured, quality-controlled, and certified ozone data from 2021 to 2023. Prior DVs from the monitoring periods 2019–2021 and 2020–2022 further support the EPA's conclusion that the area attained the 2015 ozone NAAQS.

As stated previously, under the EPA's regulations, the 2015 ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.070 ppm.¹⁸ When calculating the DV, digits to the right of the third decimal place are truncated.¹⁹ When the DV is less than or equal to 0.070 ppm at each monitor within the area, then the area is meeting the 2015 ozone NAAQS. As noted above, the 2015 ozone DVs are based solely on ozone season data, which runs annually from March 1st to October 31st for DC, MD, and VA.²⁰

The data completeness requirement in 40 CFR part 50, appendix U, is met when the average percentage of days with valid ambient monitoring data is greater than 90% and no single year is less than 75% data complete. The

Washington Area has complete data for the years 2019 to 2023, as shown in table 1 in this document, except for the Takoma Recreation Center monitor (AQS Site ID #110010050).

Due to building repairs, the Takoma Recreation Center monitoring operations were temporarily halted from April 28 to October 7, 2022. During this timeframe, the DC Department of Parks and Recreation began repairing the Takoma Recreation Center station's roof, forcing the site's closure.²¹ Operations were disrupted again from April 5 to September 14, 2023, due to a burglary incident.²² Unidentified individuals broke into the station, broke several windows, and took the data logger and the computer monitor. Building security has been enhanced since the most recent incident, and station operations and data collection have resumed.

The Takoma Recreation Center monitoring site (AQS ID #110010050) had a valid attaining design value in 2019–2021 of 0.066 ppm. The Takoma Recreation Center monitoring site has attained the 2015 ozone NAAQS standard of 0.070 ppm since 2016. Based on the monitoring history for this site and other sites in the Area, the EPA reasonably concludes that the Takoma Recreation Center monitoring site would not have exceeded the 2015 ozone NAAQS standard for the 2020–2022 or 2021–2023 DVs. For each monitor site in the area, except for the Takoma Recreation Center, the average completeness data percentage from 2019–2021, 2020–2022 and 2021–2023 is greater than 90% and no single monitor year is below 75% complete.

TABLE 1—COMPLETENESS DATA PERCENTAGE (%) FROM 2019 TO 2023 FOR THE WASHINGTON AREA

Location	AQS site ID	2019	2020	2021	2019–2021 Average	2022	2020–2022 Average	2023	2021–2023 Average
District of Columbia	110010041	100	98	98	99	95	97	98	97
District of Columbia	110010043	98	99	99	99	98	99	96	98
District of Columbia	110010050	100	97	99	99	*29	*75	*23	*50
Calvert, MD	240090011	93	96	90	93	97	94	96	94
Charles, MD	240170010	90	96	98	95	100	98	98	99
Frederick, MD	240210037	99	94	98	97	96	96	94	96
Montgomery, MD	240313001	96	97	98	97	98	98	99	98
Prince George's, MD	240330030	96	97	95	96	89	94	96	93
Prince George's, MD	240338003	95	95	98	96	97	97	97	97
Prince George's, MD	240339991	93	92	96	94	92	93	93	94
Arlington, VA	510130020	99	99	100	99	99	99	99	99
Fairfax, VA	510590030	98	98	99	98	98	98	98	98
Loudoun, VA	511071005	90	99	100	96	100	100	97	99
Prince William, VA	511530009	100	99	96	98	100	98	100	99

* This data is below the data completeness requirement in 40 CFR part 50, appendix U.

¹⁷ 1995 John S. Seitz memo.

¹⁸ See 40 CFR 50.19(b) and 40 CFR part 50, appendix U.

¹⁹ See 40 CFR 51.1300(b), which refers to 40 CFR part 50, appendix U.

²⁰ See 40 CFR 51.1300(j), which refers to 40 CFR part 58, appendix D, section 4.1, table D–3.

²¹ DOEE notified the EPA via email, included in the docket of this action, that the Takoma Recreation Center monitoring operations would be temporarily halted during the station's repair.

²² DOEE notified the EPA via email, included in the docket of this action, that the Takoma Recreation Center monitoring operations would be

temporarily halted due to the burglary incident. DOEE also noted of the temporary halt of operation in Footnote 1 on Pg. 23 of DOEE's 2024 Annual Ambient Air Monitoring Network Plan, included in the docket of this action.

Table 2 in this document shows the fourth-highest maximum 8-hour average ozone concentrations for the Washington Area monitors in each of

the years 2019 to 2023. Table 3 in this document shows the ozone DV for these same monitors based on the average of the fourth-highest maximum 8-hour

average ozone concentrations for the 2019–2021, 2020–2022, and 2021–2023 3-year periods.

TABLE 2—FOURTH-HIGHEST 8-HOUR OZONE AVERAGE CONCENTRATIONS (ppm) IN THE WASHINGTON AREA IN EACH YEAR FROM 2019 TO 2023

Location	AQS site ID	2019	2020	2021	2022	2023
District of Columbia	110010041	0.062	0.054	0.064	0.059	0.058
District of Columbia	110010043	0.071	0.063	0.072	0.066	0.072
District of Columbia	110010050	0.067	0.063	0.069	* 0.051	* 0.046
Calvert, MD	240090011	0.058	0.054	0.062	0.058	0.066
Charles, MD	240170010	0.061	0.052	0.066	0.061	0.069
Frederick, MD	240210037	0.065	0.063	0.067	0.061	0.074
Montgomery, MD	240313001	0.062	0.059	0.068	0.063	0.068
Prince George's, MD	240330030	0.071	0.064	0.066	0.061	0.070
Prince George's, MD	240338003	0.065	0.060	0.070	0.064	0.073
Prince George's, MD	240339991	0.075	0.065	0.071	0.065	0.072
Arlington, VA	510130020	0.068	0.062	0.070	0.061	0.071
Fairfax, VA	510590030	0.070	0.057	0.068	0.062	0.073
Loudoun, VA	511071005	0.060	0.060	0.066	0.061	0.067
Prince William, VA	511530009	0.060	0.057	0.062	0.058	0.070

* This data is shown in EPA's AQS as incomplete.

TABLE 3—OZONE DESIGN VALUES (ppm) FOR THE WASHINGTON AREA

Location	AQS site ID	2019–2021	2020–2022	2021–2023
District of Columbia	110010041	0.060	0.059	0.060
District of Columbia	110010043	0.068	0.067	0.070
District of Columbia	110010050	0.066	* 0.061	* 0.055
Calvert, MD	240090011	0.058	0.058	0.062
Charles, MD	240170010	0.059	0.059	0.065
Frederick, MD	240210037	0.065	0.063	0.067
Montgomery, MD	240313001	0.063	0.063	0.066
Prince George's, MD	240330030	0.067	0.063	0.065
Prince George's, MD	240338003	0.065	0.064	0.069
Prince George's, MD	240339991	0.070	0.067	0.069
Arlington, VA	510130020	0.066	0.064	0.067
Fairfax, VA	510590030	0.065	0.062	0.067
Loudoun, VA	511071005	0.062	0.062	0.064
Prince William, VA	511530009	0.059	0.059	0.063

* This data is shown in the EPA's AQS as incomplete.

The EPA's review of these data indicates that the 2021–2023 DV at each of the Washington Area's monitors that has valid 2021–2023 data met the attainment standard of 0.070 ppm, excluding the exceptional event impacted monitoring day summarized in section II of this document.²³ As a result, the EPA is able to determine that the Washington Area met the 2015 8-hour ozone standard by the applicable attainment date of August 3, 2024, and meets the requirements under the Clean Data Policy for a CDD. Prior ozone data from the 2019–2021 and 2020–2022 monitoring periods further supports the EPA's conclusion that the Area attained the 2015 ozone NAAQS.

²³ Further details on DOE's exceptional events analysis and the EPA's concurrence on the demonstration can be found in the docket for this regulatory action.

IV. Proposed Action

The EPA is proposing to determine that the Washington moderate ozone nonattainment area has attained the 2015 8-hour ozone NAAQS by the attainment date of August 3, 2024. This proposed determination is based upon complete, quality-assured, quality-controlled, and certified ambient air monitoring data that show the Washington Area has monitored attainment of the 2015 8-hour ozone NAAQS for the 2021–2023 monitoring period, including an evaluation of an exceptional events demonstration. If finalized, this action will address the EPA's obligation under CAA sections 179(c) and 181(b)(2) to determine whether the Washington Area attained the 2015 ozone NAAQS by the August 3, 2024 attainment date.

The EPA is also re-proposing to determine that the Area has clean data,

consistent with Agency policy described above. As provided in 40 CFR 51.1318, if the EPA finalizes this CDD, it would suspend the requirements for such area to submit attainment demonstrations, associated RACM, RFP plans, and contingency measures under CAA section 172(c)(9), and any other planning State implementation plan revision related to attainment of the 2015 8-hour ozone NAAQS for this Area, for so long as the Area continues to attain the standard. Finalizing either the attainment determination or CDD does not constitute a redesignation of the Washington Area to attainment for the 2015 8-hour ozone NAAQS under CAA section 107(d)(3). This action also does not involve approving any maintenance plan for the Washington Area and does not determine that the Washington Area has met all the requirements for redesignation under the CAA, including that the attainment

be due to permanent and enforceable measures. Therefore, the designation status of the Washington Area will remain nonattainment for the 2015 8-hour ozone NAAQS until such time as DC, MD, and VA submit a request for redesignation pursuant to 107(d)(3) of the CAA and the EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

The EPA also proposes to take final agency action on an exceptional events request submitted by DC on March 20, 2024, and concurred on by the EPA on July 17, 2024.

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. The EPA previously received comments on the 2023 CDD Proposal (88 FR 6688, February 1, 2023). In re-proposing the CDD, the EPA will consider all comments received on the 2023 CDD Proposal as the Agency moves forward with the current rulemaking. Accordingly, commenters need not submit duplicate comments on the current proposal.²⁴ However, the EPA welcomes comments providing additional information not previously submitted to the Agency.

V. Statutory and Executive Order Reviews

This rulemaking proposes to make an attainment determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. 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 13563 (76 FR 3821, January 21, 2011);
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

In addition, this action for the Washington Area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the Washington Area, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–26423 Filed 11–14–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 213, 217, 239, and 252

[Docket DARS–2024–0034]

RIN 0750–AK23

Defense Federal Acquisition Regulation Supplement: Disclosure of Information Regarding Foreign Obligations (DFARS Case 2018–D064)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019, which prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 14, 2025, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D064, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2018–D064. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2018–D064” on any attached documents.

○ *Email:* osd.dfars@mail.mil. Include DFARS Case 2018–D064 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To

²⁴ Comments received on the 2023 Proposal are contained in the same docket as the current proposal: Docket ID No. EPA–R03–OAR–2022–0987.

confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–296–7152.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 1655(a) and (c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 1655(a) prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments. Section 1655(c) requires contracts for those products, services, or systems to include a clause requiring the disclosures during the contract period of performance if an entity becomes aware of information requiring disclosure.

The first part of the disclosure is related to whether, after August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government to review the code of a noncommercial product, system, or service developed for DoD. The second part of the disclosure pertains to whether, after August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government in a list required by section 1654 of the NDAA for FY 2019 to review the source code of a product, system, or service that DoD is using or intends to use.

The third part of the disclosure is related to whether the entity making the disclosure holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C), the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M), or successor regulations, for information technology products, components, software, or services that contain code custom-developed for the noncommercial product, system, or service DoD is using or intends to use.

Once the disclosures are provided to DoD, and if the Secretary of Defense determines that the disclosure relating to a product, system, or service entails a risk to the national security infrastructure or data of the United States, or any national security system under the control of DoD, section 1655

requires the Secretary to take such measures as the Secretary considers appropriate to mitigate such risks. In addition, as the Secretary considers appropriate, the Secretary may condition any agreement for the use, procurement, or acquisition of the product, system, or service on the inclusion of enforceable conditions or requirements that would mitigate such risks.

II. Discussion and Analysis

This proposed rule includes a new subpart, 239.7X, Disclosure of Information Regarding Foreign Obligations. Section 239.7X00 describes the statutory requirement implemented in the new subpart. Section 239.7X01 includes new definitions of computer code, open source software, and source code. The new subpart includes the section 1655 prohibition at 239.7X02. Section 239.7X03 clarifies that the prohibition does not apply to open source software.

A section on procedures was added at 239.7X04 to require contracting officers to validate in the Catalog Data Standard within the Electronic Data Access (EDA) system (<https://piee.eb.mil>) that offerors or contractors have completed all foreign obligation disclosures prior to awarding a contract or exercising an option. Section 1655 prohibits DoD from using a product, service, or system procured or acquired under certain awards unless foreign obligation disclosures have been made. This proposed rule requires completion of the foreign obligation disclosures prior to exercising an option to ensure DoD complies with the statutory intent.

Section 239.7X05 provides prescriptions for a new solicitation provision and contract clause. The new provision is prescribed for use in solicitations that include the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations. The new clause is prescribed for use in solicitations and contracts, task orders, or delivery orders, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products and commercial services.

The purpose of the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, is to notify offerors that they will be required to make disclosures within the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>) in order to be eligible for

award. While there are three distinct disclosures, the provision identifies the first and second disclosures in one paragraph at 252.239–70YY, paragraph (c)(1), for clarity. The third disclosure is identified at paragraph (c)(2). This provision includes a requirement for all offerors to represent by submission of the offer that the information on the foreign disclosures the offeror has made within the Catalog Data Standard in EDA is current, accurate, and complete.

The purpose of the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, is to require contractors to maintain their disclosures in the Catalog Data Standard within EDA and flow down the requirement to maintain disclosures in the Catalog Data Standard within EDA to subcontractors. Similar to the provision, while there are three distinct disclosures, the clause identifies the first and second disclosures in one paragraph at 252.239–70XX, paragraph (b)(1), for clarity. The third disclosure is identified at paragraph (b)(2). The clause also requires contractors to require their subcontractors to complete foreign obligation disclosures in the Catalog Data Standard in EDA prior to awarding the subcontract.

Language was added at part 212 to apply the provision and clause to the acquisition of commercial products and commercial services. In part 213, language was added to apply the requirement to disclose foreign obligations will be applied at or below the micro-purchase threshold. Language was also added at part 217 to instruct the contracting officer exercise options only after verifying in the Catalog Data Standard in the EDA system (<https://piee.eb.mil>) that all disclosures have been completed.

III. Applicability to Contracts At or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule proposes a new provision and clause to implement the requirements of section 1655 of the NDAA for FY 2019: (1) DFARS 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation; and (2) DFARS 252.239–70ZZ, Postaward Disclosure of Foreign Obligations. The provision at DFARS 252.239–70YY is prescribed at DFARS 239.7X05(a) for use in solicitations that include the clause at DFARS 252.239–70ZZ. The clause at DFARS 252.239–70ZZ is prescribed at DFARS 239.7X05(b) for use in solicitations and contracts for the acquisition of products, services, or

systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services. DoD does intend to apply the proposed rule to contracts at or below the SAT. DoD does intend to apply the proposed rule to contracts for the acquisition of commercial products including COTS items and for the acquisition of commercial services.

A. Applicability to Contracts At or Below the Simplified Acquisition Threshold

The statute at 41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. The statute at 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does intend to make that determination. Therefore, this proposed rule will apply at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services

The statute at 10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862, or that strategic materials critical to national security be

bought from American sources pursuant to 10 U.S.C. 4863; or

- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

The statute implemented in this proposed rule does not impose criminal or civil penalties, does not require purchase pursuant to 10 U.S.C. 4862 or 4863, and does not refer to 10 U.S.C. 3452. Therefore, section 1655 of the NDAA for FY 2019 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is made. Due to delegations of authority, the Principal Director, DPCAP is the appropriate authority to make this determination. DoD intends to make that determination to apply this statute to the acquisition of commercial products including COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products including COTS items and to the acquisition of commercial services.

C. Determinations

Given that the requirements of section 1655 of the NDAA for FY 2019 were enacted to require disclosures of foreign obligations by contractors for contracts that include products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems and since products, services, or systems related to information or operational technology, cybersecurity, industrial control systems or weapon systems can include COTS items and awards at or below the SAT, it is in the best interest of the Federal Government to apply the statute to contracts for the acquisition of commercial services and commercial products, including COTS items, as defined at Federal Acquisition Regulation 2.101 and awards that are at or below the SAT. An exception for contracts for the acquisition of commercial services and commercial products, including COTS items, or for contracts or subcontracts valued at or below the SAT, would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

IV. Expected Impact of the Rule

The proposed rule implements section 1655 of the NDAA for FY 2019, which prohibits DoD from acquiring products, services, or systems relating to information or operational technology, cybersecurity, industrial control

systems, or weapon systems through a contract unless the offeror or contractor provides disclosures related to sharing source code and computer code with foreign governments. Based on data from the Federal Procurement Data System, DoD issued approximately 36,677 new awards for information technology and weapon systems to approximately 4,147 unique entities per year on average from FY 2021 through FY 2023. DoD assumes this number will cover awardees for information or operational technology, cybersecurity, industrial control systems, and weapon systems, as there is no way to track individual awards for operational technology, industrial control systems, and cybersecurity. Of the 4,147 unique entities, on average, that received awards each year, an average of approximately 17,100 awards were made to 2,667 unique small entities from FY 2021 through FY 2023. DoD assumes that the clause will apply to the estimated 4,147 unique entities, including the 2,667 unique small entities.

DoD does not have a way to track the number of unique offerors per award, so DoD estimates that the number of offerors is the number of unique entities that received awards (*i.e.*, 4,147) multiplied by a factor of three, representing three offerors per award. Therefore, the estimated number of offerors is three times the average number of entities that received information technology and weapon systems awards for FY 2021 through FY 2023 (4,147 entities $\times$ 3), or 12,441, of which 8,002 are estimated to be small entities.

The proposed changes will require offerors for products, services, or systems related to information or operational technology, cybersecurity, industrial control systems, or weapon systems to make certain disclosures in the Catalog Data Standard within EDA (<https://piee.eb.mil>) regarding whether they have shared certain source code and computer code with foreign persons or governments any time since August 12, 2013. During contract performance, prior to the exercise of any option, contractors will be required to update their disclosures in the Catalog Data Standard within EDA.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is only applied to awards for products, services, or systems related to information or operational technology, cybersecurity, industrial control systems, or weapon systems. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 1655 of the NDAA for FY 2019. Section 1655 prohibits DoD from using a product, service, or system relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems provided by an entity unless that entity makes certain disclosures. The disclosures required by the statute have three parts.

The first part of the disclosures is related to whether, since August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government to review the code of an other than commercial product, system, or service developed for DoD. The second part of the disclosure pertains to whether, since August 12, 2013, the entity making the disclosure has allowed, or is under an obligation to allow, a foreign government in the list required by section 1654 of the NDAA for FY 2019 to review the source code of a product, system, or service that DoD is using or intends to use. The third part of the disclosure is related to whether the entity making the disclosure holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C), the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M), or successor regulations, for information technology products, components, software, or services that contain code custom-developed for the other than commercial product, system, or service DoD is using or intends to use.

Once the disclosures are provided to DoD, and if the Secretary of Defense determines that the disclosure relating to a product, system, or service entails a risk to the national security infrastructure or data of the United States, or any national security system under the control of DoD, section 1655 requires the Secretary to take such measures as the Secretary considers appropriate to mitigate such risks.

The objective of this proposed rule is to implement the statutory requirement for offeror, contractor, and subcontractor disclosures under section 1655 of the NDAA for FY 2019 prior to award and during contract performance. The legal basis for the proposed rule is section 1655 of the NDAA for FY 2019.

The proposed rule applies to offerors, contractors, and subcontractors for information or operational technology, cybersecurity, industrial control systems, or weapon systems. Based on data from the Federal Procurement Data System, DoD issued approximately 36,677 awards to 4,147 entities, of which 17,100 awards were made to 2,667 small entities, for information technology and weapon systems, on average, from FY 2021 through FY 2023. DoD assumes these numbers will cover small entities awarded contracts for products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, and weapon systems, as there is no way to track individual awards for operational technology, cybersecurity, and industrial control systems. In order to estimate the number of offerors for information or operational technology, cybersecurity, industrial control systems, and weapon systems, DoD assumes the number of offerors will be the 4,147 awardees multiplied by a factor of three, or 12,441 offerors, of which 8,002 are estimated to be small entities.

This proposed rule does impose new reporting, recordkeeping, or other compliance requirements for small entities. These reporting requirements would apply to any offerors that are small entities for a contract for information or operational technology, cybersecurity, industrial control systems, and weapon systems. These small entities will be required to make disclosures within the Catalog Data Standard within the EDA system (<https://piee.eb.mil>) in order to be eligible for award and will be required to represent that the disclosures are current, accurate, and complete. Contractors whose contracts contain the clause 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, will be required to maintain their disclosures

in EDA and flow down the requirement to maintain disclosures in EDA to subcontracts and other contractual instruments.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D064) in correspondence.

VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2018–D064, Disclosure of Information Regarding Foreign Obligations, to the Office of Management and Budget.

A. Estimate of Public Burden

Public reporting burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 12,441.

Total annual responses: 14,515.

Total annual burden hours: 7,257.5.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov> or by email to osd.dfars@mail.mil. Comments can be received up to 60 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of the functions of DoD, including whether the information will

have practical utility; the accuracy of DoD's estimate of the burden of this information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email osd.dfars@mail.mil. Include DFARS Case 2018–D064 in the subject line of the message.

List of Subjects in 48 CFR Parts 212, 213, 217, 239, and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition
Regulations System.

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 212, 213, 217, 239, and 252 as follows:

- 1. The authority citation for parts 212, 213, 217, 239, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

- 2. Amend section 212.301 by adding paragraphs (f)(xvi)(E) and (F) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xvi) * * *

(E) Use the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, as prescribed in 239.7X05(a), to comply with section 1655 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

(F) Use the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, as prescribed at 239.7X05(b), to comply with section 1655 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

- 3. Add section 213.201–70 to read as follows:

213.201–70 Additional general requirements.

Do not procure or obtain, or exercise an option or otherwise extend a contract relating to, information or operational technology, cybersecurity, industrial control systems, or weapon systems from a contractor, including through a subcontractor at any tier, unless the contractor completes all foreign obligation disclosures in the Catalog Data Standard within the Electronic Data Access system (<https://piee.eb.mil>). See subpart 239.7X.

PART 217—SPECIAL CONTRACTING METHODS

- 4. Amend section 217.207 by adding paragraph (c)(3) to read as follows:

217.207 Exercise of options.

(c) * * *

(3) Verifying in the Catalog Data Standard in the Electronic Data Access system (<https://piee.eb.mil>) that all foreign obligation disclosures are completed (see 239.7X).

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

- 5. Add subpart 239.7X to read as follows:

Subpart 239.7X—Disclosure of Information Regarding Foreign Obligations

Sec.

- 239.7X00 Scope.
- 239.7X01 Definitions.
- 239.7X02 Prohibition.
- 239.7X03 Exception.
- 239.7X04 Procedures.
- 239.7X05 Solicitation provision and contract clause.

SUBPART 239.7X—DISCLOSURE OF INFORMATION REGARDING FOREIGN OBLIGATIONS

239.7X00 Scope.

This section implements the foreign obligation disclosure requirements of section 1655(a) and (c) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

239.7X01 Definitions.

As used in this subpart—

Computer code means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. It includes both source code and object code.

Open source software means software for which the human-readable source code is available for use, study, reuse, modification, enhancement, and redistribution by the users of such

software (section 1655, Pub. L. 115–232).

Source code means any collection of code, with or without comments, written using a human-readable programming language, usually as plain text. This code is later translated into machine language by a compiler. The translated code is referred to as object code.

239.7X02 Prohibition.

(a) Contracting officers shall not procure or obtain, or exercise an option or otherwise extend a contract to procure or obtain, any products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract or subcontract at any tier from a prospective contractor unless the offeror or contractor makes the disclosures required by section 1655 of the NDAA for FY 2019.

(b) Contracting officers shall ensure that they do not violate the prohibition by using the provision at 252.239–70YY and the clause at 252.239–70ZZ, as prescribed. The provision requires offerors to provide the required foreign obligation disclosures, and the clause ensures that contractors provide updates to foreign obligation disclosures for the life of the contract.

239.7X03 Exception.

The prohibition at 239.7X02 does not apply to open source software.

239.7X04 Procedures.

(a) Contracting officers shall not award a contract, task order, or delivery order for information or operational technology, cybersecurity, industrial control systems, or weapon systems, unless the prospective contractor has completed all of the foreign obligation disclosures in the Catalog Data Standard within the Electronic Data Access (EDA) system (<https://piee.eb.mil>) and those disclosures are current, accurate, and complete (see 239.7X02).

(b) Contracting officers shall not exercise an option or extend the period of performance on a contract, task order, or delivery order for information or operational technology, cybersecurity, industrial control systems, or weapons systems, unless the contractor has completed all of the foreign obligation disclosures in the Catalog Data Standard within the EDA system (see 239.7X02).

(c) Contracting officers shall work with the program office to validate that the offeror has completed all of the foreign obligation disclosures in the Catalog Data Standard within the EDA system.

(d) Contracting officers shall follow agency procedures, as applicable, in the event that the program office notifies the contracting officer that additional steps must be taken prior to award based on information disclosed in EDA.

239.7X05 Solicitation provision and contract clause.

(a) Use the provision at 252.239–70YY, Preaward Disclosure of Foreign Obligations—Representation, in solicitations that include the clause at 252.239–70ZZ.

(b) Use the clause at 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, in solicitations and contracts, task orders, or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add sections 252.239–70YY and 252.239–70ZZ to read as follows:

252.239–70YY Preaward Disclosure of Foreign Obligations—Representation.

As prescribed in 239.7X05(a), use the following provision:

Preaward Disclosure of Foreign Obligations—Representation (Date)

(a) *Definitions.* As used in this provision, *computer code*, *open source software*, and *source code* are defined in the Defense Federal Acquisition Regulation Supplement 252.239–70ZZ, Postaward Disclosure of Foreign Obligations, clause of this solicitation.

(b) *Prohibition on award.* In accordance with section 1655 of Public Law 115–232, no contract for information or operational technology, cybersecurity, industrial control systems, or weapon systems may be awarded to an offeror unless the offeror makes the disclosures described in paragraph (c).

(c) *Disclosures.* The Offeror shall complete the following foreign obligation disclosures in the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>):

(1) Whether, and if so, when, at any time after August 12, 2013, the Offeror—

(i) Has allowed a foreign person or foreign government to review the source code for any product, system, or service that DoD is using or intends to use, or the computer code for

any other than commercial product, system, or service developed for DoD; or

(ii) Is under any obligation to allow a foreign person or foreign government to review, as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government—

(A) The source code for any product, system, or service that DoD is using or intends to use; or

(B) The computer code for any other than commercial product, system, or service developed for DoD; and

(2) Whether or not the Offeror holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C) or the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M) for information technology products, components, software, or services that contain computer code custom-developed for the other than commercial product, system, or service DoD is procuring.

(d) *Exception.* The prohibition in paragraph (b) of this provision does not apply to open source software.

(e) *Representation.* By submission of its offer, the Offeror represents that it has completed the foreign obligation disclosures in EDA and the disclosures are current, accurate, and complete.

(End of provision)

252.239–70ZZ Postaward Disclosure of Foreign Obligations.

As prescribed in 239.7X05(b), use the following clause:

Postaward Disclosure of Foreign Obligations (Date)

(a) *Definitions.* As used in this clause—
Computer code means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. It includes both source code and object code.

Open source software means software for which the human-readable source code is available for use, study, reuse, modification, enhancement, and redistribution by the users of such software (section 1655, Pub. L. 115–232).

Source code means any collection of code, with or without comments, written using a human-readable programming language, usually as plain text. This code is later translated into machine language by a compiler. The translated code is referred to as object code.

(b) *Prohibition.* The Contractor shall not provide to DoD any products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems through a contract or subcontract at any tier unless the Contractor makes the disclosures described in paragraph (c).

(c) *Disclosures.* The Contractor shall complete the following foreign obligation disclosures in the Catalog Data Standard in the Electronic Data Access (EDA) system (<https://piee.eb.mil>):

(1) Whether, and if so, when, at any time after August 12, 2013, the Contractor—

(i) Has allowed a foreign person or foreign government to review the source code for any product, system, or service that DoD is using or intends to use, or the computer code for any other than commercial product, system, or service developed for DoD;

(ii) Is under any obligation to allow a foreign person or foreign government to review, as a condition of entering into an agreement for sale or other transaction with a foreign government or with a foreign person on behalf of such a government—

(A) The source code for any product, system, or service that DoD is using or intends to use; or

(B) The computer code for any other than commercial product, system, or service developed for DoD; and

(2) Whether or not the supplier holds or has sought a license pursuant to the Export Administration Regulations (15 CFR chapter VII, subchapter C) or the International Traffic in Arms Regulations (22 CFR chapter I, subchapter M) for information technology products, components, software, or services that contain computer code custom-developed for the other than commercial product, system, or service DoD is using or intends to use.

(d) *Maintenance of disclosures.* The Contractor shall maintain its foreign obligation disclosures in EDA for the life of the contract.

(e) *Identification of information requiring disclosure.* In the event the Contractor identifies information requiring disclosure during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall update its disclosures in EDA and shall disclose any mitigation measures taken or anticipated.

(f) *Exception.* The prohibition in paragraph (b) does not apply to open source software.

(g) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (g), in subcontracts, or other contractual instruments, for the acquisition of products, services, or systems relating to information or operational technology, cybersecurity, industrial control systems, or weapon systems, including those for commercial products and commercial services; and

(2) Require the subcontractor to complete the foreign obligation disclosures in EDA prior to awarding a subcontract.

(End of clause)

[FR Doc. 2024–26058 Filed 11–14–24; 8:45 am]

BILLING CODE 6001–FR–P

Notices

Federal Register
Vol. 89, No. 221
Friday, November 15, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID 2025 Digital Development Awards Application

AGENCY: Agency for International Development (USAID).
ACTION: Notice of information collection.

SUMMARY: The U.S. Agency for International Development’s Innovation, Technology, and Research Hub invites the general public to review this new information collection. This survey is administered by the USAID Innovation, Technology, and Research Hub’s Technology Division. Responses to this survey will be used to select the winners of the 2025 Digital Development Awards once the application opens next year. The Digital Development Awards recognize and celebrate USAID-funded projects and activities that harness the power of digital technology to promote inclusive growth.
DATES: All comments should be submitted in writing by January 14, 2025.

ADDRESSES: To access and review the Google Form, please visit https://docs.google.com/forms/d/e/1FAIpQLSc2oCYXZ5A-PQNzlu952vKo8Cw7-9FELYT2Myuw5x4Z_LrvRg/viewform. Interested persons are invited to submit comments regarding the proposed information collection to digitaldevelopment@usaid.gov.
FOR FURTHER INFORMATION CONTACT: For specific questions related to this collection, please contact John O’Bryan at jobryan@usaid.gov or 202–216–3443.
SUPPLEMENTARY INFORMATION: The Digital Development Awards recognize and celebrate USAID-funded projects and activities that embrace the Agency’s strategic goals of improving development and humanitarian assistance outcomes through the use of

digital technology and strengthening open, secure, and inclusive digital ecosystems.
John O’Bryan,
Knowledge & Insights Team Lead, USAID Innovation, Technology, and Research Hub.
[FR Doc. 2024–26186 Filed 11–14–24; 8:45 am]
BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE
Forest Service
Northwest Forest Plan Area Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).
ACTION: Notice of meeting.
SUMMARY: The Northwest Forest Plan Advisory Committee will hold a public meeting according to the details shown below. The Committee is authorized under the National Forest Management Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to provide advice and pragmatic recommendations regarding potential regional scale land management planning approaches and solutions within the Northwest Forest Plan Area within the context of the 2012 planning rule.
DATES: An in-person and virtual meeting will be held on December 10, 2024, 8:30 a.m.–4:30 p.m. Pacific Standard Time (PST), December 11, 2024, 8:30 a.m.–4:30 p.m. PST, and December 12, 2024, 8:30 a.m.–12:00 p.m. PST.

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. PST on December 2, 2024. Written public comments will be accepted through 11:59 p.m. PST on December 2, 2024. Comments submitted after this date will be provided by the Forest Service to the Committee, 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: This meeting will be held in person, at the Hotel Leo, 1224 Cornwall Ave., Bellingham, WA 98225.

Committee information and meeting details can be found at the following website: <https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1076013> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.
Written Comments: Written comments must be sent by email to sm.fs.nwfp_faca@usda.gov or via mail (i.e., postmarked) to Delaney Caslow, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204. The Forest Service strongly prefers comments be submitted electronically.
Oral Comments: Persons or organizations wishing to make in-person oral comments must pre-register by 11:59 p.m. PST, December 2, 2024, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to sm.fs.nwfp_faca@usda.gov or via mail (i.e., postmarked) to Delaney Caslow, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204.
FOR FURTHER INFORMATION CONTACT: Jacqueline Buchanan, Designated Federal Officer (DFO), by phone at 303–275–5452 or email at Jacqueline.buchanan@usda.gov or Delaney Caslow, NWFP FAC Coordinator, at Delaney.Caslow@usda.gov.
SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:
1. Provide recommendations for updates to the Northwest Forest Plan to the Forest Service.
2. Schedule the next meeting.
The agenda will include time for individuals to make in-person oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by 11:59 p.m. PST on December 2, 2024. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.
Please contact the person 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 in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

JoLynn Anderson,
Liaison Officer.

[FR Doc. 2024-26608 Filed 11-14-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood-Willamette Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Hood-Willamette Resource Advisory Committee (RAC) will hold a public meeting 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 Mt. Hood and Willamette National Forests within Clackamas, Douglas, Hood River, Jefferson, Lane, Linn, Marion, Multnomah, and Wasco Counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on December 2, 2024, 9 a.m. to 4 p.m., Pacific Standard Time.

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. Pacific Standard Time on November 25, 2024. Written public comments will be accepted by 11:59 p.m. Pacific Standard Time on November 25, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, 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: This meeting will be held in person at the Keizer Civic Center, located at 930 Chemawa Road Northeast, Keizer, Oregon 97303. The public may also join the meeting virtually via teleconference or videoconference online at <https://www.fs.usda.gov/detail/willamette/workingtogether/advisorycommittees/?cid=stelprdb5048434>. RAC information and meeting details can be found at the website link provided above or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to eileen.kitayama@usda.gov or via mail (postmarked) to Eileen Kitayama, 3106 Pierce Pkwy., Suite D, Springfield, Oregon 97477. 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. Pacific Standard Time on November 25, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to eileen.kitayama@usda.gov or via mail (postmarked) to Eileen Kitayama, 3106

Pierce Pkwy., Suite D, Springfield, Oregon 97477.

FOR FURTHER INFORMATION CONTACT:

Meta Loftsgaarden, Designated Federal Officer, by phone at (971) 378-9704 or email at meta.loftsgaarden@usda.gov; or Eileen Kitayama, RAC Coordinator, by phone at (458) 245-0170 or email at eileen.kitayama@usda.gov.

SUPPLEMENTARY INFORMATION: The

purpose of the meeting is to:

1. Elect a Chairperson;
2. Hear from Title II project proponents and discuss Title II project proposals;
3. Make funding recommendations on Title II projects;
4. Approve meeting minutes; and
5. Schedule the next meeting

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person 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 the 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: October 16, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024-24265 Filed 11-14-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

West Fork Kickapoo Watershed; Programmatic Environmental Impact Statement

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture (USDA).

ACTION: Notice of availability; record of decision.

SUMMARY: This notice of availability presents the Record of Decision (ROD) on a Watershed Project Plan—Programmatic Environmental Impact Statement (Plan-PEIS) for the West Fork Kickapoo (WFK) Watershed prepared in partnership with Monroe and Vernon Counties, Wisconsin (Sponsors). This notice announces the plan to proceed with the implementation of Alternative 7—Proposed Action—Decommission All Dams and Replace Jersey Valley County Park Dam (WFK-1) with a high hazard, multi-purpose dam, identified in the Plan-PEIS. Alternative 7 proposes to decommission dams by excavating a notch to pass the 100-year flood without impounding water. It also proposes to replace WFK-1 with a high hazard, multi-purpose dam approximately 1,000 feet downstream of the existing dam. This action will avoid environmental impacts to the extent possible and mitigate impacts that are unavoidable.

ADDRESSES: You may request a copy of the ROD from: Steve Becker, NRCS State

Conservation Engineer, 8030 Excelsior Drive, Suite 200, Madison, WI 53717.

FOR FURTHER INFORMATION CONTACT:

Steve Becker; telephone: (608) 400-6176; or email: steve.becker@usda.gov.

Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for

Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Decision

Natural Resources Conservation Service (NRCS) has prepared a ROD following completion of the Plan-PEIS. The Plan-PEIS provides a retrospective analysis of the existing flood control project and then evaluates alternatives for the final disposition of 9 flood control dams constructed between 1956 and 1971. The purpose of the Plan-PEIS is to ensure agencies consider the environmental impacts of their action in decision making. NRCS involvement is through Public Law 83-566, Watershed Protection and Flood Prevention Act, as amended. The ROD is available for viewing at the following link: <https://www.wfkandccwatersheds.com/2023>. NRCS has decided to assist the Sponsors with implementing Alternative 7 which proposes to decommission all 9 dams in the watershed and replace WFK-1 about 1,000 feet downstream of the existing dam.

Background

The WFK Watershed has an area of 75,387 acres (117.8 square miles) to the confluence with the Kickapoo River. The focused planning area for the Plan-PEIS is 63,761 acres (99.6 square miles). The Plan-PEIS follows an original Watershed Work Plan developed in 1961 to reduce flood damages in the WFK valley under the Watershed Protection and Flood Prevention Act of 1954.

The major problems in the watershed between 1956 and 1961 were floodwater damages to: crops and pasture, fences, farmsteads, machinery, buildings, livestock, county, township roads and bridges, and the village of Liberty. Project measures implemented under the 1961 Watershed Work Plan include a multitude of land treatment practices to reduce erosion and sedimentation behind the dams and 7 flood control dams with a total capacity of 3,652 acre-feet to regulate flood flows from 30.73 square miles, or 31 percent of the watershed above the village of Liberty. With the addition of two dams built

under the Pilot Watershed Program in 1956, the runoff from 34.6 square miles or 35 percent of the watershed above the village of Liberty is controlled. The dams have now completed their Federal interest or original economic evaluation period of 50 years.

On the night of August 27, 2018, two watershed dams over-topped and two dams failed, including the WFK-1 and Mlsna Dams. Rainfall amounts up to 11 inches were reported on the night of August 27 and early morning of August 28. Additional rainfall amounts up to 7 inches were reported in the afternoon of August 28 after the dam failures.

The dams failed (breached) along the interface between the earthfill and highly jointed sandstone abutments. Each breach extended full depth to the valley floor. No one was injured or killed. Large debris fields were observed downstream of the dams for about 1/4 mile. Agricultural lands and road crossings were damaged. Engineering investigations concluded that flow through the fractured sandstone during high pool stage caused internal erosion and piping of the earthfill dam and contributed to the failures. The Sponsors and NRCS are concerned that a similar vulnerability exists in the remaining 7 dams.

Environmental Review

The ROD summarizes the findings of the Plan-PEIS and provides the basis for a decision to decommission 9 flood control dams in the WFK watershed and replace WFK-1 with a high hazard, multi-purpose dam. The watershed project plan and the environmental document were combined in the single Plan-PEIS document. NRCS is the lead Federal agency responsible for the content and quality of the Plan-EIS for the purposes of National Environmental Policy Act (NEPA), Principles, Requirements, and Guidelines (PR&G) for Federal Investments in Water Resources and National Historic Preservation Act (NHPA) compliance.

The ROD is issued as specified by the NEPA process (42 U.S.C. 4321-4347) which follows the NRCS NEPA regulations in 7 CFR part 650, subpart A, and 7 CFR part 622. The NRCS NEPA regulations adopt the Council of Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500-1508) in total.

Alternatives

Considered alternatives included: no action, repair, rehabilitation, relocation, replacement, removal, and construction of additional dams. Considered alternatives also include the substitution of large watershed dams

with a multitude of smaller farm ponds. Further effort was made to evaluate the effects of various land management strategies to reduce watershed runoff and flood damages were compared for present land use against a full watershed conversion from cropland to grassland.

Three of 12 alternatives were provided for detailed study and for comparative analysis: No Action, Decommission Dams, Decommission Dams and Replace WFK-1. The No Action alternative does not address dam safety. Two failed dams, plus three failures in the adjacent Coon Creek Watershed, present a high probability for future failures. The State Dam Safety Program has issued an administrative order to Vernon County, as the owner, to repair or remove the two failed dams; similarly, the State Dam Safety Program would likely order the repair or removal of the 7 remaining dams if the dams fail in the future. The Decommission Dams alternative proposes to decommission all 9 dams to prevent future dam failures and potential loss of life and property damage. The Decommission Dams and Replace WFK-1 dam alternative prevents future dam failures and restores the flood control and recreational benefits that are a keystone of Jersey Valley County Park.

Factors Considered in Making the Decision

Geologic and geotechnical engineering investigations were conducted following the failures of the Mlsna and WFK-1 Dams. The investigation report concluded that flow through the fractured sandstone abutments during high pool stages contributed to the failures. A similar vulnerability is believed to exist in the remaining structures.

Failure of the remaining dams could result in loss of life and would likely cause downstream flood, erosion, sedimentation damages to cropland, farm structures, road crossings, and utilities. Dam failures would also result in erosion and sedimentation of streams resulting in adverse impacts to fish and wildlife habitat.

All programmatic alternatives have submarginal economic performance except for the WFK-1 dam replacement. They have negative discounted net economic efficiency and low benefit to cost ratios. However, the preferred alternative of dam decommissioning decreases People at Risk (PAR) from a dam failure and increases length of natural stream connectivity for habitat and recreation. The Decommission Dams alternative is justified by the social (PAR and recreation) and

environmental (stream restoration) accounting of the PR&G for Federal Investments in Water Resources. The replacement of the WFK-1 dam would restore a unique recreational opportunity in the Driftless Area of Southwest Wisconsin and re-establish the cornerstone of Jersey Valley County Park with 370-acres that generate 11 types of recreation. It will also provide flood protection benefits for about 49 homes.

Public Notice

As specified in 7 CFR 650.12(c) and 40 CFR 1505.2, the Draft PEIS public notice was initiated by publication of the Draft EIS on December 22, 2023, and published in the **Federal Register** (88 FR 88610), as identified by EIS number 20230181 in the Environmental Protection Agency's (EPA) Central Data Exchange (CDX) system. Concluding the initial public notice, essential comments were addressed and incorporated in the Final PEIS. The Final PEIS was made available for review through EPA's CDX system on May 17, 2024, and published in the **Federal Register** (89 FR 43401).

Conclusion

The Plan-PEIS for the West Fork Kickapoo Watershed uses all practical means, consistent with considerations of national policy, to meet the goals established in NEPA. The Plan-PEIS will serve the overall public interest and meet the needs of the project sponsors. The Plan-PEIS has been prepared, reviewed, and accepted in accordance with the provisions of NEPA as implemented by Departmental regulations for the preparation of a Plan-PEIS. After considering a broad range of alternatives, the Plan-PEIS has found Alternative 7—Proposed Action—Decommission Dams and Replace WFK-1, to be the environmentally preferable alternative to serve the Sponsor's purpose and need.

NRCS has decided to assist Sponsors with the implementation of Alternative 7 to decommission all 9 dams by excavating a notch to pass the 100-year flood without impounding water while avoiding environmental impacts to the extent possible and mitigating for impacts that are unavoidable. NRCS also has decided to assist Sponsors with the replacement of the WFK-1 dam to restore a unique recreational opportunity in the Driftless Area and re-establish the cornerstone of Jersey Valley County Park with 370-acres that generate 11 types of recreation. It will also provide flood protection benefits for about 49 homes.

NRCS has prepared a concise ROD for this action. The ROD was prepared and

will be signed by the State Conservationist (STC) following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the Final PEIS in the **Federal Register**. The ROD will be distributed to all who provided essential comments on the Draft PEIS and will be available for review upon request.

Federal Assistance Programs

The title and number of the Federal Assistance Program as found in the Assistance Listing¹ to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This project is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and telephone) or dial 711 for Telecommunications Relay Service

¹ See <https://sam.gov/content/assistance-listings>.

(both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

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

USDA is an equal opportunity provider, employer, and lender.

Joseph Schmelz,

*Acting Wisconsin State Conservationist,
Natural Resources Conservation Service.*

[FR Doc. 2024-26636 Filed 11-14-24; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

[Docket No. RHS-24-NONE-0038]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities service, U.S. Department of Agriculture (USDA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Rural Housing Service, Rural Business-Cooperative Service, and the Rural Utilities Service, agencies of the Rural Development (RD) mission area within the U.S. Department of Agriculture, hereinafter collectively referred to as the Agency(ies) to request Office of Management and Budget's (OMB) approval for an extension of a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by January 14, 2025.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal,

www.regulations.gov. Additional information about RD and its programs is available at www.rd.usda.gov.

FOR FURTHER INFORMATION CONTACT:

Pamela Bennett, RD Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Stop 1522, South Building, Washington, DC 20250-1522. Telephone: (202) 720-9639. Email: pamela.bennett@usda.gov.

SUPPLEMENTARY INFORMATION: The 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 that the Agency is submitting to OMB for revision of an existing collection.

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 by the Federal eRulemaking Portal: Go to www.regulations.gov and, in the "Search for dockets and documents on agency actions" box, type in the Docket No. located at the beginning of this notice and click the "Search" button. From the search results, click on or locate the document title and select the "Comment" button. Before inputting comments, commenters may review the "Commenter's Checklist" (optional). Insert comments under the "Comment" title, click "Browse" to attach files (if available), input email address and select "Submit Comment." 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 through the site's "FAQ" link. All comments will be

available for public inspection online at www.regulations.gov.

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

Title: 7 CFR 1901—Common Forms Package for Civil Rights Forms.

OMB Number: 0575-0201.

Type of Request: Extension of a Previously Approved Information Collection.

Abstract: The information collection under OMB Number 0575-0201 enables the Agencies to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The Agencies are required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E, require the recipients of RD Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin. The information collected and maintained by the recipients of certain programs in RD are used internally by the agency for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RD and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner, and in full compliance with the civil rights laws. In addition, the Agency and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies, and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: The Agencies are requesting approval for one respondent and a one-hour place holder for each of

the three forms covered. The burden for each of the forms will be accounted for within the individual Rural Development program collection packages using the form(s).

Respondents: Recipients of RD Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 1.
Estimated Number of Responses per Respondent per Form (Form 400–1, 400–4, and 400–6) in the Package: 1.

Copies of this information collection can be obtained from Pamela Bennett, Innovation Center—Regulations Management Division, at Email: pamela.bennett@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.

Joaquin Altoro,

Administrator, Rural Housing Service, USDA Rural Development.

[FR Doc. 2024–26639 Filed 11–14–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Meeting of the 2030 Census Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the 2030 Census Advisory Committee (2030 CAC or Committee). The Committee will assist the Census Bureau in devising strategies to increase awareness of and participation in the next decennial census, reduce barriers to response, and enhance the public's trust and willingness to respond.

Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: The virtual meeting will be held on:

- Thursday, December 5, 2024, from 1:30 p.m. to 3:30 p.m. eastern standard time.

ADDRESSES: Please visit the Census Advisory Committee website at <https://www.census.gov/about/cac/2030cac/meetings/2024-12-meeting.html> for the 2030 CAC 2nd Fall meeting information, including the agenda, and how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program,

Performance and Stakeholder Integration (PPSI), shana.j.banks@census.gov, Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides insight, perspectives, and expertise through recommendations on planning and implementation of the 2030 Census. The members of the 2030 CAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). The purpose of the meeting is to provide recommendations to the Census Bureau on a topic that is feasible to the preparation of the 2030 Census.

All meetings are open to the public. Public comments will be accepted in writing only to shana.j.banks@census.gov (subject line “2030 CAC 2nd Fall Meeting Public Comment”). A brief period will be set aside during the meeting to read public comments received in advance of 12:00 p.m. EST, December 4, 2024. Any public comments received after the deadline will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: November 8, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–26655 Filed 11–14–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–178]

Certain Tungsten Shot From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2024, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation on imports of certain tungsten shot (tungsten shot) from the People's Republic of China (China).¹ Currently, the Commerce is due to issue the preliminary determination in this investigation no later than December 24, 2024.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 6, 2024, the petitioner² submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.³ The petitioner stated that it requests postponement to allow Commerce adequate time to conduct a thorough analysis in this investigation and collect the necessary information for determining the most accurate possible antidumping duty margins.⁴

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its

¹ See *Certain Tungsten Shot from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 65856 (August 13, 2024).

² The petitioner is Tungsten Parts Wyoming, Inc.

³ See Petitioner's Letter, “Request to Postpone Preliminary Determination,” dated November 6, 2024.

⁴ *Id.*

preliminary determination no later than February 12, 2025. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 8, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–26640 Filed 11–14–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) hereby publishes a list of scope rulings and circumvention determinations made during the period April 1, 2024, through June 30, 2024. We intend to publish future lists after the close of the next calendar quarter.

DATES: Applicable November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.¹ Our most recent notification of scope rulings was published on August 5, 2024.² This current notice covers all scope rulings made by Enforcement and Compliance between April 1, 2024, and June 30, 2024.

Scope Rulings Made April 1, 2024, Through June 30, 2024

Germany

A–428–849: Common Alloy Aluminum Sheet From Germany

Requestor: Capps Manufacturing Inc. Heat-treatable clad alloy aluminum sheets with either Aluminum Association alloy designation 2024 or 7075 are not covered by the scope of the antidumping duty order on common alloy aluminum sheet from Germany because common alloy aluminum sheet is not defined in the scope as having aluminum alloy designations in the 2XXX or 7XXX series: May 22, 2024.

People's Republic of China (China)

A–570–831: Fresh Garlic From China

Requester: Marcatus QED, Inc. Whole garlic cloves preserved in brine are covered by the scope of the antidumping order on fresh garlic from China because whole garlic cloves that are “provisionally preserved” fall under the plain language of the scope. In addition, the garlic is not considered to be “heat processed”: April 18, 2024.

A–570–053 and C–570–054: Certain Aluminum Foil From China

Requestor: Instrument Transformers, LLC (an operating unit of the General Electric Company). Aluminum capacitor foil is covered by the scope of the antidumping duty and countervailing duty orders on certain aluminum foil from China because foil is within the plain language of the scope of the orders: April 26, 2024.

A–570–073 and C–570–074: Common Alloy Aluminum Sheet From China

Requestor: K-Tex LLC. Aluminum composite panels consisting of a thermoplastic core between two aluminum alloy sheets (aluminum composite panels) produced by a certain Chinese producer and imported by K-Tex LLC are covered by the scope of the antidumping duty and countervailing duty orders on common alloy aluminum sheet from China because aluminum composite panels share similarities with common alloy aluminum sheet based on the following factors: physical characteristics, expectations of the ultimate user, ultimate use, channels of trade, and advertising: April 26, 2024.

A–570–827: Certain Cased Pencils From China

Requestor: School Specialty, LLC. #2 pencils, drawing pencils, and colored pencils manufactured by School Specialty in the Philippines using Chinese inputs and exported from the

Philippines to the United States are covered by the scope of the order: May 6, 2024.

A–570–117 and C–570–118: Wood Mouldings and Millwork Products From China

Requestor: Chicago Dowel Company determine that the wooden dowels, which are later developed into lollipop sticks are within the scope of the order: May 22, 2024.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and scope/circumvention inquiry combinations made during the period April 1, 2024, through June 30, 2024. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to CommerceCLU@trade.gov.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: November 7, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–26642 Filed 11–14–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE466]

Endangered and Threatened Species; Initiation of 5-Year Review for the Smoothback angelshark (*Squatina oculata*)

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces its intent to conduct a 5-year review of the endangered Smoothback angelshark (*Squatina oculata*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the Smoothback angelshark, particularly information on its status, threats, and

¹ See 19 CFR 351.225(o).

² See *Notice of Scope Rulings*, 89 FR 63407–08 (August 5, 2024).

conservation efforts, which has become available since the previous status review in June 2016.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than January 14, 2025. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit your information, identified by docket number NOAA–NMFS–2024–0134, by the following method:

- **Electronic Submissions:** Submit all electronic comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0134 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: NMFS may not consider comments or other information if sent by any other method, to any other address or individual, or received after the comment period ends. All comments and information received are a part of the public record and NMFS will post the comments for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Parsons, NOAA Affiliate, (301) 427–8403 or Chris.Parsons@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice announces our active review of the Smoothback angelshark (*Squatina oculata*), currently listed as endangered (81 FR 50394; August 1, 2016). Section 4(c)(2)(A) of the ESA requires that the Secretary, through NMFS, conduct a review of listed species at least once every 5 years. The species was last reviewed in 2016 (80 FR 40969; July 14, 2015). The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. Based on such reviews, we determine whether a listed species should be removed from the list (i.e., delisted), or be changed in status from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary determines, based on consideration of the factors and standards set forth in 50 CFR 424.11(c),

that the best scientific and commercial data available substantiate that that, after conducting a status review based on the best scientific and commercial data available: (1) the species is extinct; (2) the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species; or (3) new information that has become available since the original listing decision shows that the listed entity does not meet the definition of an endangered species or a threatened species; or (4) new information that has become available since the original listing decision shows the listed entity does not meet the definition of a species. Any change in Federal status would require a separate rulemaking process.

Background information on the Smoothback angelshark is available on the NMFS website at: <https://www.fisheries.noaa.gov/species/smoothback-angelshark/overview>.

Public Solicitation of New Relevant Information

To ensure that the 5-year review is complete and based on the best scientific and commercial data available, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the listed Saimaa seal. Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, suitability, and important features for conservation; (3) degree, nature, and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the review, you may submit your information and materials electronically (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 8, 2024.

Lisa Manning,

Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–26537 Filed 11–14–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Innovation Fund Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Call for applications to serve on the Innovation Fund Advisory Committee.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is seeking applications from persons interested in serving on the Public Wireless Supply Chain Innovation Fund Advisory Committee (hereinafter “the IFAC” or “the Committee”) for a two-year term. The IFAC will advise the Secretary and the NTIA Administrator on the administration of the Public Wireless Supply Chain Innovation Fund.

DATES: To be considered for calendar year 2025 appointments, applications must be postmarked or electronically transmitted on or before December 16, 2024.

ADDRESSES: Persons may submit applications, with the information specified below, to Richard Upchurch, Designated Federal Officer, by email to IFAC@ntia.gov or by U.S. mail or commercial delivery service to Office of Public Safety Communications, National Telecommunications and Information Administration, 1401 Constitution Ave. NW, Room X, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Upchurch, Designated Federal Officer, at (202) 617–6592 or rupchurch@ntia.gov. Please direct media inquiries to NTIA’s Office of Public Affairs at (202) 482–7002 or press@ntia.gov.

SUPPLEMENTARY INFORMATION: The Public Wireless Supply Chain Innovation Fund Advisory Committee is chartered by the Department of Commerce under the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.*, and pursuant to Section 105(b) of the National Telecommunications and Information Administration Organization Act, as amended, 47 U.S.C. 904(b). The Committee is authorized under Section

9202(a)(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, codified as 47 U.S.C. 906(a)(1) (FY21 NDAA).

The FY21 NDAA requires the Secretary of Commerce, acting through the NTIA Administrator, and in consultation with the Under Secretary of Commerce for Standards and Technology, to establish a Federal advisory committee, composed of government and private sector experts, to advise the Secretary and the NTIA Administrator on the administration of the Innovation Fund. The Innovation Fund is a \$1.5 billion competitive grants program authorized under the FY21 NDAA to support the following:

(i) Promoting and deploying technology, including software, hardware, and microprocessing technology, that will enhance competitiveness in the fifth-generation (commonly known as “5G”) and successor wireless technology supply chains that use open and interoperable interface radio access networks.

(ii) Accelerating commercial deployments of open interface standards-based compatible, interoperable equipment, such as equipment developed pursuant to the standards set forth by organizations such as the O-RAN Alliance, the Telecom Infra Project, 3GPP, the Open-RAN Software Community, or any successor organizations.

(iii) Promoting and deploying compatibility of new 5G equipment with future open standards-based, interoperable equipment.

(iv) Managing integration of multi-vendor network environments.

(v) Identifying objective criteria to define equipment as compliant with open standards for multi-vendor network equipment interoperability.

(vi) Promoting and deploying security features enhancing the integrity and availability of equipment in multi-vendor networks.

(vii) Promoting and deploying network function virtualization to facilitate multi-vendor interoperability and a more diverse vendor market.

The IFAC will function solely as an advisory body, in accordance with the provisions of the FACA. In particular, the IFAC shall advise the Secretary and the NTIA Administrator on the administration of the Innovation Fund and technology developments to help inform (i) the strategic direction of the Innovation Fund, and (ii) efforts of the Federal Government to promote a more secure, diverse, sustainable, and competitive supply chain. Additional information about the IFAC and its

activities may be found on the IFAC web page at <https://www.ntia.gov/committees-and-working-groups/innovation-fund-advisory-committee>.

Under the Committee's charter, the IFAC shall consist of not less than ten (10) and generally not more than twenty-five (25) members. Membership balance is not static and may change, depending on the work of the Committee. Members of the IFAC who are not Federal officers or employees and are appointed for their individual perspectives or view point will be appointed to serve as Representatives. Members of the IFAC who are not Federal officers or employees and are appointed for their individual expertise and experience will serve as Special Government Employees (SGEs) as the term is defined in 18 U.S.C. 202. SGEs are subject to conflict of interest laws and regulations, including (but not limited to) the obligation to annually file a New Entrant Confidential Financial Disclosure Report (OGE Form 450) and complete ethics training. Members of the IFAC who are Federal officers or employees will be appointed pursuant to 41 CFR 102.3.130(d) to serve as Regular Government Employees (RGEs). Members will be individually advised of the capacity in which they will serve through their appointment letters.

Members who are not Federal officers or employees will serve without compensation, and NTIA will not reimburse members for travel or per diem expenses. The IFAC will meet at least two times each year, as determined by the Designated Federal Officer (DFO) in consultation with the Chair or Co-Chairs. Additional meetings may be called at the discretion of the Chair or Co-Chairs subject to the approval of the DFO. It is anticipated that the inaugural meeting of the IFAC will be held in person, with the remaining meetings conducted virtually.

No member may be a registered federal lobbyist pursuant to the Lobbying Disclosure Act of 1995 (codified at 2 U.S.C. 1601 *et seq.*).¹ No member may be an agent of a foreign principal required to register pursuant to the Foreign Agents Registration Act of 1938, as amended (codified at 22 U.S.C. 611 *et seq.*).

Members of the IFAC shall be appointed by the NTIA Administrator. NTIA currently seeks applicants for a two-year term that will commence in approximately Spring 2025 and

continue for two years, subject to the renewal of the Committee's charter or its termination by proper authority.

In accordance with the Federal Advisory Committee Act, as amended (FACA) 5 U.S.C. 1001 *et seq.*, the Committee's membership will be fairly balanced in terms of the points of view represented by members and the functions to be performed. Accordingly, to ensure that private and public sector members represent a broad range of expertise and perspectives, candidates from a variety of professional fields will be considered, including associations, standards organizations, academic and research institutions, laboratories, companies of various sizes and expertise, nonprofit and civil society entities, and consortiums, in addition to government agencies. Members will be highly qualified to provide advice and information on technology developments, research and development, lab testing, interoperability, integration, certification and standards, network function virtualization, commercial deployments, security, and/or economic competitiveness related to open and interoperable 5G and future generation communication networks. In particular, NTIA seeks technical experts with strong open and interoperable network deployment experience, familiarity with 5G and successor wireless technologies, or expertise with specific applications of wireless technologies.

During their service on the IFAC, non-Federal government members may not be applicants for Innovation Fund grants, have a financial interest in applicants for Innovation Fund grants, or be employed by applicants for Innovation Fund grants; represented entities cannot be applicants for Innovation Fund grants or have a financial interest in applicants for Innovation Fund grants. (Widely diversified paid memberships do not constitute a financial interest).

Each application must include the applicant's full name, address, telephone number, and email address, along with a summary of the applicant's qualifications that identifies, with specificity, how his or her education, training, experience, expertise, or other factors would support the IFAC's work and how his or her participation would help achieve the balance factors described above. Each application must also include a detailed resume or curriculum vitae. To be considered for a calendar year 2025 appointment, expressions of interest must be electronically transmitted on or before December 16, 2024.

¹ See Office of Management and Budget, Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions, 79 FR 47482 (Aug. 13, 2014).

Dated: November 8, 2024.

Stephanie Weiner,

*Chief Counsel, National Telecommunications
and Information Administration.*

[FR Doc. 2024-26635 Filed 11-14-24; 8:45 am]

BILLING CODE 3510-10-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* December 15, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On October 11, 2024 (89 FR 82579), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

6515-00-NIB-8191—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Small

6515-00-NIB-8192—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Medium

6515-00-NIB-8193—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Large

6515-00-NIB-8194—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, X-Large

Authorized Source of Supply: Central Association for the Blind and Visually Impaired, Utica, NY

Contracting Activity: OFFICE OF ACQUISITION, ARLINGTON, VA

NSN(s)—Product Name(s):

1730-00-945-8450—Chock Wheel

Authorized Source of Supply: NEWVIEW Oklahoma, Inc, Oklahoma City, OK
Contracting Activity: DLA AVIATION, RICHMOND, VA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

7510-01-484-4564—Refill, Rubberized Ballpoint Stick Pen w Chain, Blue Ink, Medium Point

Authorized Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-26656 Filed 11-14-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of information collection; extension of comment period.

SUMMARY: On October 22, 2024, the Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission (Commission), published a Notice of information collection, for a “Disability Qualification Determination” form with a comment period ending on November 16, 2024. This notice announces the Commission’s extension of the comment period to November 24, 2024.

DATES: The comment period for the “Disability Qualification Determination” form, published October 22, 2024, at 89 FR 84338, is extended. Electronic comments should be received no later than 11:59 p.m. eastern time on November 24, 2024.

ADDRESSES: Submit comments to www.regulations.gov. To locate this information collection activity, search for Docket #CPPBSD-2024-0004-0082. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Christopher Stewart, Compliance and Enforcement Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (703) 254-6172; email: cstewart@abilityone.gov. If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION: On October 22, 2024, the Commission published a Notice of information collection, for a “Disability Qualification Determination” form that an AbilityOne-participating nonprofit agency employer will fill out to document its determination of an individual’s eligibility to be a qualified direct labor employee for purposes of meeting the statutory requirements of the Javits-Wagner-O’Day (JWOD) Act, 41 U.S.C. 8501-8506. The form is an updated and modified version of the Commission’s Individual Eligibility Evaluation (IEE) form (OMB Control #3037-0012). The purpose of the IEE was to determine and document an individual’s disability eligibility by identifying the individual’s barriers to employment as well as the job supports the individual needs to perform their job. The updated “Disability Qualification Determination” form is consistent with the Commission’s responsibilities and ensures that the Commission will collect the most

pertinent data to inform its oversight and decision making.

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-26658 Filed 11-14-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: December 15, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

- 8415-01-584-1635—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSS
- 8415-01-584-1637—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSR
- 8415-01-584-1639—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSL
- 8415-01-584-1640—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SS
- 8415-01-584-1641—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SR

- 8415-01-584-1642—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SL
- 8415-01-584-1643—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, MS
- 8415-01-584-1644—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, MR
- 8415-01-584-1645—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, ML
- 8415-01-584-1648—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LS
- 8415-01-584-1649—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LR
- 8415-01-584-1654—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LL
- 8415-01-584-1655—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLS
- 8415-01-584-1656—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLR
- 8415-01-584-1663—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLL
- 8415-01-584-1665—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XXLS
- 8415-01-584-1672—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLR
- 8415-01-584-1674—Trousers, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XXLL

Authorized Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s):

- 8415-01-583-9445—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, ML
- 8415-01-583-9447—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LS
- 8415-01-583-9449—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LR
- 8415-01-583-9450—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, LL
- 8415-01-583-9451—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLS
- 8415-01-583-9453—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLR
- 8415-01-583-9454—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XLL
- 8415-01-583-9455—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XXLS

- 8415-01-583-9456—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XXLR
- 8415-01-583-9458—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XXLL
- 8415-01-583-9470—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSS
- 8415-01-583-9471—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSR
- 8415-01-583-9474—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, XSL
- 8415-01-583-9479—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SS
- 8415-01-583-9480—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SR
- 8415-01-583-9483—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, SL
- 8415-01-583-9485—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, MS
- 8415-01-583-9488—Jacket, Intermediate Weather Outer Layer (IWOL) Layer 6 FREE, Army, OEFCEP, MR

Authorized Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s):

- 8415-01-546-0124—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Small/Short
- 8415-01-546-0128—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Small/Regular
- 8415-01-546-0160—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Short
- 8415-01-538-8598—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Regular
- 8415-01-546-0166—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Long
- 8415-01-538-8614—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Medium/Regular
- 8415-01-546-0305—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Medium/Long
- 8415-01-538-8621—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Large/Regular
- 8415-01-538-8701—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Large/Long
- 8415-01-538-8705—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/Regular
- 8415-01-538-8711—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/Long

8415-01-546-0362—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/X-Long

8415-01-546-0369—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/Regular

8415-01-546-0370—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/Long

8415-01-546-0374—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/X-Long

Authorized Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI

Authorized Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN

Authorized Source of Supply: TradeWinds Services, Inc., Merrillville, IN

Authorized Source of Supply: BESTWORK INDUSTRIES FOR THE BLIND, INC., Cherry Hill, NJ

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

6645-01-698-6558—Clock, Wall, Quartz, “Think Safety”, 12¾” Diameter, Black Frame

Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):

8540-01-378-6218—Tissue, Toilet, Jumbo, 1-Ply, 3.5” x 4000’, White, 6 Rolls

Authorized Source of Supply: Outlook Nebraska, Inc, Omaha, NE

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Grounds Maintenance

Authorized for: U.S. Army Reserve Center: 1850 Baltimore Road Maus-Warfield, Rockville, MD

Contracting Activity: DEPT OF THE ARMY, W6QM MICC CTR—FT DIX (RC)

Service Type: Grounds Maintenance and Snow Removal

Mandatory for: US Army Corps of Engineers, Walla Walla District Headquarters, 201 North Third Ave., Walla Walla, WA

Authorized Source of Supply: Lillie Rice Center, Inc., Walla Walla, WA

Contracting Activity: DEPT OF THE ARMY, W071 ENDIST WALLA WALLA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-26660 Filed 11-14-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled operates as the U.S. AbilityOne Commission (Commission). This notice announces the Commission’s intent to submit the Information Collection Request (“ICR”) described below to the Office of Management and Budget (OMB) for approval under applicable provisions of the Paperwork Reduction Act. This notice provides an opportunity to interested members of the public and affected agencies to comment on a proposed updated Nonprofit Agency (NPA) Annual Representations and Certifications form.

DATES: Submit comments on or before December 14, 2024.

ADDRESSES: Submit comments to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Christopher Stewart, Compliance and Enforcement Attorney, Office of General Counsel, U.S. AbilityOne Commission, 355 E Street SW, Suite 325, Washington, DC 20024; telephone: (703) 254-6172; email: cstewart@abilityone.gov. If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Overview of ICR: This notice pertains to an ICR the Commission intends to submit to OMB for approval of an updated form that each AbilityOne NPA will submit annually regarding its AbilityOne Program performance. This is a revision of an existing form that is submitted on an annual reporting cycle. This ICR is consistent with OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These regulations require the Commission to provide an opportunity to interested members of the public and affected agencies to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)) such as those proposed to be implemented through this updated form.

The Commission is responsible for implementing the Javits-Wagner-O’Day

(JWOD) Act, 41 U.S.C. 8501–8506. In doing so, the Commission oversees the AbilityOne Program (Program), a program in which individuals who are blind or have significant disabilities provide products and services to Federal agencies, thereby creating employment opportunities for such individuals. The Commission maintains a Procurement List of mandatory source products and services provided by approximately 400 qualified nonprofit agencies (NPAs). The individuals who are blind or have significant disabilities performing direct labor tasks for NPA-employers are called “qualifying direct labor employees.” The Commission also established the term “participating employees” to mean the subset of such qualifying direct labor employees who work on AbilityOne contracts.

The implementing regulations for the JWOD Act, which are located at 41 CFR chapter 51, provide the requirements, procedures, and standards for the Program. Section 51-4.3 of the regulations sets forth the requirements that an NPA must meet to maintain qualification for participation in the Program. Under this section of the regulations, an NPA must submit a completed copy of the appropriate Annual Certification form. This documentation helps the Commission determine whether the NPA is meeting the qualification requirements of the Program. The Commission has also published policies regarding compliance requirements for qualified NPAs.

This information collection request seeks approval for the Commission to update its collection of information necessary to annually verify an NPA’s compliance with Program requirements, as required by statute, regulations, and policies, as well to update its collection of the NPA’s performance data to assess the total effect and effectiveness of the AbilityOne Program. The proposed form is called the Annual Representations and Certifications (ARC) for AbilityOne Qualified Nonprofit Agencies.

As part of the Commission’s modernization of the Program, the updated ARC form will collect limited aggregate information: (1) NPA Program-related revenue and Program-related subcontracting; (2) a headcount of qualifying direct labor employees and other NPA employees who perform direct labor; (2) the direct labor hours performed by qualifying direct labor employees and others; (3) a headcount of veterans employed by the NPA; (4) the wages paid to participating employees and other NPA employees who perform direct labor; (5) employment benefits offered to

participating employees; (6) employment mobility outcomes (e.g., internal promotion, employment with a new employer, etc.) achieved by participating employees; (7) the source of disability eligibility determination documentation for participating employees; and (8) eleven (11) questions about general NPA function, governance, and support(s) received from its designated Central Nonprofit Agency (CNA).

To streamline the ARC as compared to its predecessor form, the Commission removed the following: (1) questions about NPA governance, NPA-Program requirements, and Program integrity questions requiring yes/no responses, as those matters will be separately monitored by the designated CNA's compliance program; (2) the NPA's revenue, wages paid to direct labor employees, and subcontracting expenditures for work performed by the NPA that is not subject to the Program; and (3) career mobility outcomes generated from an NPA's vocational rehabilitation activities (previously called direct placement). In this ARC modification, the Commission requires a limited expansion in reporting: (1) the headcount and cumulative employment of qualifying direct labor employees and other NPA employees who perform direct labor; (2) wages (total wages and other benefits paid) to participating employees and other NPA employees who perform direct labor; (3) the source(s) of disability determination documentation; (4) employment benefits offered to participating employees (select all that apply); and (5) general information about the number of board members that self-identify as having a disability, whether the Program contract worksites are represented by union(s), and what types of supports the NPA received from its designated CNA.

The proposed updated ARC is available at www.abilityone.gov.

The ARC will be required annually after the close of the Federal fiscal year. In accordance with 41 CFR 51–4.3(a), each NPA must submit the ARC to its responsible CNA by November 1. The form will be completed and submitted electronically.

The Commission published a sixty-day notice for this ICR on May 3, 2024. The Commission received twenty-six (26) comments from various stakeholders in response to the notice. Comments were received from NPAs, CNAs, and other stakeholders. In addition to general comments, the comments can be grouped into those that questioned the Commission's need to collect certain data, comments that sought clarification of definitions or

specific data elements, comments about career mobility data, comments about benefits-related data, comments about subcontracting data, and comments that questioned the Commission's estimated time burden for completing the form.

Among the general comments, some included requests for instructions for the form, or for the definitions of various terms used in the form to be made clearer. A few commenters supported the Commission's stated purposes of helping ensure the integrity of and furthering the mission of the AbilityOne Program. One stated that the forms present a good opportunity to increase transparency and ensure program accountability. Several commenters noted that the proposed form collected many of the same data elements collected by the CNAs and wanted to ensure there would not be duplication of data collection.

Among the comments questioning the Commission's need to collect certain data, some commenters asserted that the proposed data collection exceeded the Commission's statutory authority or went beyond collecting data pertaining to NPA qualification requirements. Some commenters stated that the rationale for collecting the information published in the 60-day notice was too general to substantiate the collection. Others requested information about the Commission's planned use for the information.

Among the comments about specific data elements to be collected, some questioned the need to collect data regarding the source of participating employees' disability eligibility determination. Some commenters questioned the purpose of collecting the number of employees on October 1, September 30, and a cumulative value, and requested clarification of the term "cumulative." Some questioned the purpose and benefit of collecting the number of employees with disabilities performing indirect labor, particularly if that data element is optional, as the form makes clear. Many commenters were critical of the data request for mean (average) and median hourly wages paid, citing the burden in providing such data and questioning the utility of such data. Some of those commenters requested a definition and/or clarification of the terms "mean" and "median." Many commenters noted their concerns with collecting data regarding the employment of spouses and dependents of veterans, requested the definition of a "dependent," and noted that such data was not currently collected by the NPAs.

Many commenters questioned the need for data regarding career mobility

of participating employees. Some asked for clarification of the three types of career mobility referenced in the form (lateral, upward and outward). Others sought clarification of an "NPA system for career mobility" and suggested simply using the term "NPA" instead. One commenter suggested that "demotion" be included as a category. Some commenters stated that NPAs often do not know where an employee has gone, including what new jobs they may have attained, when an employee has chosen to leave. One commenter stated that NPAs contacting departing or former employees for feedback on employment mobility outcomes would be burdensome. Finally, some commenters requested the ability to note on the form that the employee has not desired any new career opportunities.

Among the comments regarding the benefits-related data requested, some questioned the relevance of collecting this data. Some commenters noted that employees may choose to opt out of receiving certain benefits. Some commenters were supportive of collecting employment benefits data but suggested that it would be useful to provide a free text option for the NPA to explain its benefits system.

Several comments related to the scope of the data requested about subcontracts. Some commenters requested a definition of "subcontract" and "subcontractor." Some sought clarification of the timeframe for reporting subcontracts, while others sought clarification on how to accurately report whether the subcontractor's employees and NPA employees were occupying the same labor positions and whether the subcontractor had offered jobs to NPA employees. One commenter recommended that the Commission add Service-Disabled Veteran-Owned Small Businesses as a category for small business subcontract reporting.

Among the comments that questioned the Commission's estimated time burden, several commenters suggested that the Commission's estimated time burden was inadequate or understated. Two offered a time burden amount for the previous form, but neither commented whether the time burden for the proposed form would be higher, lower, or approximately the same as the previous form. Only one commenter offered an estimate that the proposed form would require 20 hours to collect and report the required data.

Some commenters stated that it may be costly and onerous to report the number of participating employees by the medical documentation source.

Another commenter stated it may be burdensome to calculate and report employees with disabilities employed in indirect labor functions, but did not offer any details as to why that would be difficult and did not offer an estimate of the additional time it would take to make that calculation. One commenter said that it may be burdensome to report low, high, and average hourly wages paid to participating employees.

Other commenters stated it would be burdensome to report the percentage of employees that elect to receive the NPA-provided health insurance or the cash payment instead, but did not offer details as to why that would be difficult and did not offer an estimate of the additional time it would take to determine that number.

The two CNAs, as commenters, stated that the burden to modify their data collection system was not considered in the burden estimate.

The Commission appreciates the comments it received and has made a number of modifications in the revised form available with this notice.

As a general matter, the Commission modified and reduced the data collection in the proposed form. To address the apparent confusion regarding whether the proposed form will duplicate existing data collections, the Commission has made clear that the proposed form replaces and supersedes the previous, similarly named annual certification required from NPAs. In addition, the Commission has made clear that it expects the CNAs to collect the data from this form in a manner that does not duplicate the manner in which the CNAs currently collect much of the same data. These points have been discussed in a variety of public meetings and forums and will continue to be articulated by the Commission.

With respect to the Commission's authority and need to collect the data, some of the information being collected is required by law, regulation, or policy, while other information is needed to ensure that the Program operates efficiently, successfully, and in accord with the mission of the Program. In order to strengthen and grow the employment opportunities offered through the AbilityOne Program, the Commission needs quantitative data to demonstrate the Program's integrity, to reflect the number and nature of good jobs offered in the Federal contracts obtained through the sole-source procurement process of the Program, and to determine the positive employment outcomes, including opportunities for career mobility, that currently exist in the Program.

The Commission's collection of data about the sources of employees' disability qualification documentation will be used to help ensure and demonstrate that individuals working on AbilityOne projects have qualifying disabilities and are eligible for the hiring opportunities available through the sole-source procurement program. Another proposed data collection form, the "Participating Employee Information" form, will collect in an electronic system the source of disability documentation at the time of hire for new employees, as well as for individuals currently employed on the AbilityOne contracts. The Commission expects this electronic collection will enable an NPA to auto-calculate the aggregate number of employees by medical documentation source. Indeed, the Commission has conveyed to each CNAs that it expects the CNA's electronic data system to enable such auto-population.

In response to requests for clarification of various terminology used in the form, the Commission has changed the term "cumulative" to the term "total employed during the year" to clarify the value required in the participating employee count table. The Commission has also modified the question regarding "number of employees who are blind or have a significant disability performing indirect labor" to "number of employees who self-identify as a person with a disability performing indirect labor" to clarify that is a count of indirect labor employees that self-identify as having a disability.

The Commission has removed the question regarding the median hourly wages paid to participating employees so as to reduce the burden on NPAs in calculating the median hourly wage. The data request for the mean hourly wages paid has been changed so that a field will be automatically calculated once the NPA has entered the count of participating employees during the fiscal year and the wages paid to participating employees.

The Commission has removed the request for data regarding the number of military spouses or dependents hired by the NPA on Federal contracts obtained through the AbilityOne Program, thus eliminating the need to further define those terms. That data is often of interest to Federal agencies, particularly the Department of Defense, as the agency considers whether to ask or agree that a contract be placed on the AbilityOne sole-source procurement list. The NPAs that collect such data often include that information when they bid for contracts. However, data

requests regarding employment of veteran spouses or dependents will not be included on this form.

The Commission revised the question seeking the percentage of participating employees that utilize NPA-provided health insurance (or cash in lieu of the benefit). The form now simply provides check boxes for the NPA to indicate which benefits are offered. Based on comments received, "tuition assistance or other education support" is now included in the list of benefits offered. In addition, an "other" category has been added, along with an option to enter free text describing an employment benefit that is not listed on the form. Finally, an additional free text box has been added so an NPA can provide additional information on its benefits structure, if it wishes to do so.

The measurement of participating employee career mobility is particularly important to the Commission's demonstration that the AbilityOne Program offers a wide range of good jobs. The Commission added parenthetical explanations for the employment mobility outcome terms—lateral movement, upward movement, and outward movement—and has added "demotion" as a potential outcome.

The Commission also added an option to allow the NPA to note that the employee has a "stated desire to remain in present position." As a subset of that answer, the form has an option for the NPA to note that the employee has "expressed concern regarding potential government benefit disqualification as a result of increased wages."

The Commission has included an option of "unknown" regarding an employee's desire to remain in a current labor position. However, once NPAs are required to engage in annual career planning with their employees, the NPA will be expected to know the answer to whether a participating employee wishes to remain in their current labor position.

The Commission has significantly modified the requested information regarding subcontracting of work on the Procurement List. It has removed entirely the section seeking data on whether participating employees are performing the same or similar jobs as employees of the subcontractor. This data will be relevant when an NPA is a prime contractor and subcontracts with an entity in which the employees of the subcontractor and the NPAs participating employees perform the same or similar jobs. This is an approach the Commission is exploring as a means of increasing integration in the workplace, but it is not yet a common practice in the Program.

The Commission has also removed the question regarding whether a subcontractor has employed participating employees. While this data is relevant regardless of whether participating employees are doing the same or similar job as subcontractor employees, it is not yet the norm for NPAs to require that their subcontractors have a mechanism by which the subcontractor will view participating employees as a talent pool to draw upon for employment.

Finally, the Commission has removed all collection of information about an NPA’s subcontracts on contracts obtained independently of the AbilityOne Program.

The Commission has added Service-Disabled Veteran-Owned Small Business as a choice of a subcontractor business entity type. The Commission

will also define the terms “subcontract” and “subcontracting” in the instructions for the proposed form.

With regard to the time burden estimate, the Commission has revised its estimate for an NPA to complete the proposed form from eight (8) hours to twenty (20) hours.

One commenter suggested that ten (10) hours was more realistic for completing the form, while a second commenter suggested that twenty (20) hours was the appropriate estimate. No other commenters suggested alternative time estimates.

In order to be conservative, the Commission now estimates that an NPA will need twenty (20) hours to complete the proposed form. The Commission estimates that it will take a human resources staff person (or an equivalent staff person) nine (9) hours to complete

some sections of the form; a financial specialist nine (9) hours to complete other sections of the form, and two (2) hours by the Principal Officer to review and certify the form.

To calculate the cost burden for this average annual burden, the Commission used national average pay data from the U.S. Bureau of Labor Statistics, using the May 2023 National Occupational Employment and Wage Estimate of \$36.57 as the mean hourly wage for a Human Resources Specialist (OC 13–1070), \$46.37 as the mean hourly wage for a Financial Specialist (OC 13–2000), and \$124.47 as the mean hourly wage for a Chief Executive Officer (OC 11–1011). See <https://www.bls.gov/news.release/ocwage.t01.htm>.

The table below represents the time and cost burden the Commission estimates this form will necessitate.

NPA positions	Annual form burden (hours)	Total time burden for all employees	Annual form cost burden (dollars)
HR Specialist	9		\$329.13
Financial Specialist	9		417.33
Principal Officer	2		248.94
Total	20		995.40

With respect to this collection of information via the proposed form, the Commission welcomes comments on the following:

1. The necessity to collect this information to support the Commission’s mission and oversight responsibilities;
2. Methodology to improve the accuracy of the estimated time burden;
3. Suggestions or methods to minimize the burdens associated with collecting the information described in this ICR.

Michael R. Jurkowski,
Director, Business Operations.
[FR Doc. 2024–26659 Filed 11–14–24; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of partially closed meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of

the U.S. Naval Academy Board of Visitors, hereafter “Board,” will take place.

DATES: Open to the public, December 2, 2024, from 9 a.m. to 11 a.m. eastern time zone (ET). Closed to the public, December 2, 2024, from 11 a.m. to noon (12 p.m.) ET.

ADDRESSES: This meeting will be held at the U.S. Naval Academy in Annapolis, MD. Pending prevailing health directives, the meeting will be handicap accessible. Escort is required.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ross Hammerer, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503, hammerer@usna.edu, or visit <https://www.usna.edu/PAO/Superintendent/bov.php>.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 United States Code (U.S.C.), appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), the General Services Administration’s (GSA) Federal Advisory Committee Management Final Rule (41 Code of Federal Regulations (CFR) part 102–3).

Purpose of Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda:
Proposed meeting agenda for December 2, 2024.

0900 Call to Order (Open to Public)
0900–1055 Business Session (Open to Public)
1055–1100 Break (Open to Public)
1100–1200 Executive Session (Closed to Public)

Current details on the board of visitors may be found at <https://www.usna.edu/PAO/Superintendent/bov.php>.

The executive session of the meeting from 11 a.m. to 12 p.m. ET on December 2, 2024, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to

the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy, in consultation with the Department of the Navy General Counsel, has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to noon (12 p.m.) will be concerned with matters protected under sections 552b(c) (5), (6), and (7) of title 5, U.S.C.

Authority: 5 U.S.C. 552b.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Any public attendance at the meeting will be governed by prevailing health directives at the United States Naval Academy. Please contact the Executive Secretary five business days prior to the meeting to coordinate access to the meeting.

Written Statements: Per section 10(a)(3) of the FACA and 41 CFR 102–3.105(l) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least 10 business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via mail to 121 Blake Rd, Annapolis, MD 21402. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Dated: November 12, 2024.

A.J. Gioiello,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–26687 Filed 11–14–24; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0140]

Agency Information Collection Activities; Comment Request; Eligibility of Students at Institutions of Higher Education for Funds Under the CARES Act

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 14, 2025.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0140. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Lauren Kennedy, 202–453–7957.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the

following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Eligibility of Students at Institutions of Higher Education for Funds under the CARES Act.

OMB Control Number: 1840–0857.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector; Individuals and Households.

Total Estimated Number of Annual Responses: 498,806.

Total Estimated Number of Annual Burden Hours: 42,142.

Abstract: The U.S. Department of Education (Department) is requesting clearance of this information collection request to allow institutions of higher education to meet the requirements under the Higher Education Emergency Relief Fund (HEERF) program. This clearance is intended to cover actions by institutions and their students related to requesting and receiving HEERF funds, such as setting up any institutional application or other process and establishing review and recordkeeping procedures. This will help to ensure that the distribution of funds is managed by institutions in accordance with the clarification discussed in the Final Rule titled Eligibility to Receive Emergency Financial Aid Grants to Students Under the Higher Education Emergency Relief Programs (86 FR 26608). There is no form associated with this request and no information is being collected by the Department.

Dated: November 12, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–26670 Filed 11–14–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0202]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of the Impact of English Learner Reclassification Policies**AGENCY:** Institute of Education Sciences (IES), Department of Education (ED).**ACTION:** Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 16, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Tracy Rimdzius, 202–453–7403.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of the Impact of English Learner Reclassification Policies.

OMB Control Number: 1850–0974.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,080.

Total Estimated Number of Annual Burden Hours: 1,477.

Abstract: The data collection described in this submission will assist policymakers in understanding the impact of classification and reclassification policies that govern students’ English learner (EL) status. Specifically, the study examines (1) whether classification and reclassification was implemented more consistently across districts within states after the start of the Every Student Succeeds Act (ESSA) and (2) whether classification and reclassification at current thresholds helps, harms, or is neutral for ELs’ and former ELs’ instructional opportunities, experiences, achievement, and attainment. This revision request adds district and school surveys to the approved data collection. The surveys will assess how district-level policies, practices, and procedures influence the impacts of reclassification on ELs as well as provide valuable descriptive information from districts and schools on local implementation of policies and practices that may affect outcomes for ELs. It will complement an existing data collection (#1850–0974) of student information from state longitudinal data systems (SLDSs).

Dated: November 12, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–26681 Filed 11–14–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–518]

Application for Authorization To Export Electric Energy; Altop Energy Investments LP

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Altop Energy Investments LP (the Applicant) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before December 16, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Janessa Zucchetto, (240) 474–8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE’s Grid Deployment Office (GDO) under Redlegation Order No. S3–DEL–GD1–2023.

On October 15, 2024, Altop Energy Investments LP filed an application for authorization to transmit electric energy from the United States to Canada for a term of five years. App. at 1.

According to the Application, “Altop Energy Investments LP is a Delaware Limited Partnership with its principal place of business in Houston, TX.” *Id.* The Applicant states that it is “engaged in the trading and marketing of both financial and physical electricity in the wholesale power markets in North America.” *Id.* Further, the Applicant states that through its subsidiary Altop Energy Trading LLC, it has market-based rate authority from the Federal Energy Regulatory Commission. *Id.* Altop Energy Investments LP states it “has no obligation to serve native load, does not own or operate any electric distribution or transmission facilities, does not own or operate any natural gas distribution or transmission facilities, and does not own or operate any generation assets”. *Id.* Additionally, the Applicant represents that the energy to be exported will be purchased with voluntarily agreements and thus be surplus to the requirements of the selling entities and the overall electrical system and “will not impair the reliability of the grid.” *Id.* at 2.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of Federal Energy Regulatory Commission's (FERC's) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at *Electricity.Exports@hq.doe.gov* in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Altop Energy Investments LP Application should be clearly marked with GDO Docket No. EA-518. Additional copies are to be provided directly to Gebre-Egziabher Gebre, Altop Energy Investments LP, 440 Louisiana Street, Suite 575, Houston, TX 77002, *gebre.gebre@altopenenergy.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on November 8, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 12, 2024.

Treena V. Garrett,

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

[FR Doc. 2024-26647 Filed 11-14-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[GDO Docket No. EA-517]

Application for Renewal of Authorization To Export Electric Energy; Altop Energy Investments LP

AGENCY: Grid Deployment Office,
Department of Energy.

ACTION: Notice of application.

SUMMARY: Altop Energy Investments LP (the Applicant) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before December 16, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to

Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Janessa Zucchetto, (240) 474-8226,
Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Redelegation Order No. S3-DEL-GD1-2023.

On October 15, 2024, Altop Energy Investments LP filed an application (Application or App.) with DOE to transmit electric energy from the United States to Mexico for a five-year term. App. at 1.

According to the Application, Altop Energy Investments LP is a Delaware limited partnership with its principal

place of business in Houston, TX. *Id.* The Applicant states that it is "engaged in the trading and marketing of both financial and physical electricity in the wholesale power markets in North America." *Id.* Further, the Applicant states that it is authorized via its subsidiaries to sell wholesale electric energy, capacity and ancillary services at market-based rates in all regions of the United States. *Id.* Altop Energy Investment LP states that it "has no obligation to serve native load, does not own or operate any electric distribution or transmission facilities, does not own or operate any natural gas distribution or transmission facilities, and does not own or operate any generation assets." *Id.* The Applicant represents that the energy to be exported will be surplus to the requirements of selling entities and the overall electrical system and that its exports "will not impair the reliability of the grid." *Id.* at 2.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the email address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Altop Energy Investments LP's Application should be clearly marked with GDO Docket No. EA-517. Additional copies are to be provided directly to Gebre-Egziabher Gebre, Altop Energy Investments LP, 440 Louisiana Street, Suite 575, Houston, TX 77002, *gebre.gebre@altopenenergy.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0>

applications-0 or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on November 8, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 12, 2024.

Treena V. Garrett,

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

[FR Doc. 2024-26649 Filed 11-14-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25-28-000.
Applicants: Morgnec Road Solar, LLC.
Description: Morgnec Road Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/8/24.

Accession Number: 20241108-5035.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: EG25-29-000.
Applicants: Spring Grove Solar II, LLC.

Description: Spring Grove Solar II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/8/24.

Accession Number: 20241108-5037.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: EG25-30-000.
Applicants: Cascade Energy Storage II, LLC.

Description: Cascade Energy Storage II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/8/24.

Accession Number: 20241108-5149.

Comment Date: 5 p.m. ET 11/29/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22-2293-001.

Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order No 881 Compliance filing to be effective 10/29/2019.

Filed Date: 11/8/24.

Accession Number: 20241108-5106.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER22-2317-001.
Applicants: Portland General Electric Company.

Description: Compliance filing: PGE OATT Att Q Order No. 881 Second Compliance Filing to be effective 7/12/2025.

Filed Date: 11/8/24.

Accession Number: 20241108-5001.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER22-2353-001.
Applicants: Florida Power & Light Company.

Description: Compliance filing: Order No. 881 Compliance Filing Regarding Timeline for AAR Calculation to be effective N/A.

Filed Date: 11/8/24.

Accession Number: 20241108-5133.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER24-3005-001.
Applicants: Eldorado Solar Project, LLC.

Description: Tariff Amendment: Supplement to Application for MBR Authority to be effective 10/28/2024.

Filed Date: 11/8/24.

Accession Number: 20241108-5150.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-392-000.
Applicants: Dominion Energy South Carolina, Inc.

Description: Compliance filing: Order No 881 Compliance filing to be effective 7/12/2025.

Filed Date: 11/8/24.

Accession Number: 20241108-5045.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-393-000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024-11-08_System Support Resource (SSR) Tariff Provision Clean-Up to be effective 2/1/2025.

Filed Date: 11/8/24.

Accession Number: 20241108-5051.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-394-000.
Applicants: New York Independent System Operator, Inc., NextEra Energy Transmission New York, Inc., Niagara Mohawk Power Corporation.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Joint 205: Amnd EPCA among NYISO, NEETNY, Nat Grid, and Alle Catt Wind (SA2812) to be effective 10/25/2024.

Filed Date: 11/8/24.

Accession Number: 20241108-5065.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-395-000.
Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Amendment to Service Agreement FERC No. 804 to be effective 10/10/2024.

Filed Date: 11/8/24.

Accession Number: 20241108-5101.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-396-000.
Applicants: Bluebird Solar LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 1/8/2025.

Filed Date: 11/8/24.

Accession Number: 20241108-5138.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-397-000.
Applicants: New York State Electric & Gas Corporation, York Independent System Operator, Inc.

Description: 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii): NYISO-NYSEG Joint 205: Amnd EPCA NYISO, NYSEG, Cassadaga, Arkwright, Ball Hill to be effective 10/25/2024.

Filed Date: 11/8/24.

Accession Number: 20241108-5145.

Comment Date: 5 p.m. ET 11/29/24.

Docket Numbers: ER25-398-000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii): NMPC 205: proposed revisions to OATT Att. H regarding post-employment benefits to be effective 1/1/2025.

Filed Date: 11/8/24.

Accession Number: 20241108-5173.

Comment Date: 5 p.m. ET 11/29/24.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR24-4-001.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits supplemental filing to the Five-Year Electric Reliability Organization Performance Assessment Report.

Filed Date: 11/8/24.

Accession Number: 20241108-5040.

Comment Date: 5 p.m. ET 11/22/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any

of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: November 8, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-26676 Filed 11-14-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL25-15-000]

Scrubgrass Reclamation Company, L.P.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 8, 2024, the Commission issued an order in Docket No. EL25-15-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Scrubgrass Reclamation Company, L.P.'s Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Scrubgrass Reclamation Company, L.P.*, 189 FERC ¶ 61,106 (2024).

The refund effective date in Docket No. EL25-15-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL25-15-000 must

file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: November 8, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-26685 Filed 11-14-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24-11-000]

Notice of Request for Comments; Large Loads Co-Located at Generating Facilities

On November 1, 2024, the Federal Energy Regulatory Commission (Commission) convened a Commissioner-led technical conference in the above captioned proceeding to discuss generic issues related to the co-location of large loads at generating facilities. All interested persons are invited to file post-conference comments on or before December 9, 2024 regarding issues raised during the technical conference that they believe would benefit from further discussion.

Comments may be filed electronically via the internet.¹ Instructions are available on the Commission's website <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact Keatley Adams at Keatley.Adams@ferc.gov or 202-502-8678. For legal information, please contact Christopher Chaulk at Christopher.Chaulk@ferc.gov or 202-502-6720.

Dated: November 8, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-26677 Filed 11-14-24; 8:45 am]

BILLING CODE 6717-01-P

¹ See 18 CFR 385.2001(a)(1)(iii) (2024).

ENVIRONMENTAL PROTECTION AGENCY**[FRL OP-OFA-152]****Environmental Impact Statements; Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)
Filed November 4, 2024 10 a.m. EST
Through November 8, 2024 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240203, Draft, FHWA, PA, U.S. 6219, Section 050 Transportation Improvement Project, Comment Period Ends: 01/13/2025, Contact: Benjamin Harvey 717-221-3701.

EIS No. 20240204, Final, GSA, WA, Kenneth G. Ward (Lynden) and Sumas Land Ports of Entry Modernization and Expansion Projects Lynden and Sumas, Washington, Review Period Ends: 12/16/2024, Contact: Patrick Manning 253-218-5286.

EIS No. 20240205, Draft, BLM, WY, Newcastle and Nebraska Draft Resource Management Plans and Environmental Impact Statement, Comment Period Ends: 02/13/2025, Contact: Kathleen T. Lacko, Project Manager 307-261-7536.

EIS No. 20240206, Final, BLM, UT, Greater Sage-grouse Rangeland Planning Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, Review Period Ends: 12/16/2024, Contact: Pat Deibert 720-447-8107.

EIS No. 20240207, Final, USCG, WA, Expansion and Modernization of Base Seattle, Washington, Review Period Ends: 12/16/2024, Contact: Dean Amundson 510-637-5541.

EIS No. 20240208, Draft, USFS, OR, Northwest Forest Plan Amendment, Comment Period Ends: 03/17/2025, Contact: Priya Shahani 707-562-8737.

EIS No. 20240209, Final, USAF, MA, Air National Guard F-15EX Eagle II and F-35A Lightning II Beddowns, Review Period Ends: 12/16/2024, Contact: Mr. Devin Scherer 240-612-8422.

EIS No. 20240210, Draft, BLM, NV, Purple Sage Energy Center Project, Comment Period Ends: 02/13/2025, Contact: Jessica Headen 702-515-5206.

EIS No. 20240211, Final, BR, CA, Long-Term Operation of the Central Valley Project and State Water Project, Review Period Ends: 12/16/2024, Contact: Tim Warner 916-539-9510.

EIS No. 20240212, Final, BLM, AZ, Jove Solar Energy Project, Review Period Ends: 12/16/2024, Contact: Derek Eysenbach 602-417-9505.

EIS No. 20240213, Final, BOEM, MA, SouthCoast Wind Project, Review Period Ends: 12/16/2024, Contact: Genevieve Brune 703-787-1553.

EIS No. 20240214, Draft Supplement, USFWS, AK, Potential Land Exchange Involving Izembek National Wildlife Refuge Lands, Comment Period Ends: 12/30/2024, Contact: Bobbie Jo Skibo 907-441-1539.

EIS No. 20240215, Draft, BOEM, CA, California Offshore Wind, Comment Period Ends: 02/12/2025, Contact: Lisa Gilbane 805-384-6387.

Amended Notice

EIS No. 20240169, Draft, GSA, TX, Proposed Modernization of the Bridge of the Americas Land Port of Entry, El Paso, Texas, Comment Period Ends: 12/02/2024, Contact: Karla Carmichael 817-822-1372.

Revision to FR Notice Published 09/20/2024; Extending the Comment Period from 11/04/2024 to 12/02/2024.

Dated: November 8, 2024.

Timothy Witman,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024-26654 Filed 11-14-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0607; FRL-11686-02-OCSP]

Pesticides; Flexible Packaging; Child Resistant Packaging Requirements; Notice of Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of February 8, 2024, the Environmental Protection Agency (EPA or Agency) announced it had determined that pesticide products marketed in flexible packaging (e.g., pouches) 20 fluid ounces or less in size with labeling either directly recommending

residential use or reasonably interpreted to permit residential use are subject to the Child Resistant Packaging (CRP) mitigation measures, regardless of acute toxicity requirements, based on the visual similarity of the packaging design to children's food products. With this document, the Agency is clarifying that the flexible packaging intended to be addressed by the determination is the packaging known as flexible spouted pouches, also known as a spouted pouch, spouted pouch and cap, or fitment pouch. The determination does not apply to non-spouted flexible packaging such as the flexible packaging of household cleaning wipes and pet spot on pipettes or applicators.

DATES: If a registrant has a registered pesticide product in flexible packaging that is not compliant with the clarified determination, the registrant must contact the appropriate EPA Product Manager by May 14, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0607, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person is available at <https://www.epa.gov/dockets>.

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

SUPPLEMENTARY INFORMATION:**I. Does this action apply to me?**

You may be affected by this action if you currently market or propose to market a pesticide in flexible spouted packages. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

If you have questions about the applicability of this determination to you, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA is taking this action pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, as amended by the Pesticide Registration Improvement Act of 2022 (referred to as "PRIA 5"), Public Law 117–328, and the packaging requirements for pesticides and devices promulgated in 40 CFR part 157.

III. What action is the Agency taking?

With this document, the Agency is clarifying the scope of the determination provided in the **Federal Register** of February 8, 2024 (89 FR 8675) (FRL–11686–01–OCSP), which provided EPA's determination that pursuant to 40 CFR 157.22(a)(6) and (b), pesticide products marketed in flexible packaging (e.g., pouches) 20 fluid ounces or less in size with labeling either directly recommending residential use or reasonably interpreted to permit residential use are subject to Child Resistant Packaging (CRP) mitigation measures, regardless of acute toxicity requirements or labeling indicating the product is considered a Restricted Use Pesticide, based on the visual similarity of the packaging design to children's food products. EPA has seen an increased interest from pesticide manufacturers in the use of flexible spouted packaging to store and distribute products, especially insecticides and herbicides that residential users can dilute and apply to their lawn and garden.

Subsequent to that publication, stakeholders communicated to EPA that the notice created confusion and requested that EPA publish a notice that better defines the scope of the products affected by that determination. With this notice, EPA is providing the clarification requested by stakeholders. Specifically, EPA is clarifying that the determination applies to flexible spouted pouches, also identified as spouted pouches, spouted pouches and cap, or fitment pouches. It does not apply to flexible packaging without a spout, such as the non-spouted flexible packaging of household cleaning wipes or pet spot on pipettes or applicators.

Taken together, the determination provided in the **Federal Register** of February 8, 2024, and this clarification to that determination, further convey to applicants and registrants that CRP is necessary for this packaging type at the size limits specified in the determination, regardless of acute toxicity, when labeled for or reasonably interpreted to permit residential use and will be evaluated in applications for

new products or for amendment of currently registered products submitted under FIFRA section 33, *i.e.*, PRIA–5. Changes to packaging to implement CRP measures on existing products must be submitted as a PRIA R340/341, A470, or B680/681, not as a fast-track non-PRIA amendment, to allow for CRP data review. This document provides clarification for 'flexible pouches' and does not change any of the requirements or recommended mitigations provided in the determination of February 8, 2024.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 4, 2024.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2024–26671 Filed 11–14–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2024–3094]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 92–41, Application for Financial Institution Short-Term, Single-Buyer Insurance

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Banks of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. This collection of information is necessary to determine eligibility of the underlying export transaction for EXIM insurance coverage.

DATES: Comments must be received on or before December 16, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on www.regulations.gov (EIB 10–02) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0019. The application tool can be reviewed at: https://img.exim.gov/s3fs-public/pub/pending/FIBC_Application_eib92-41_2024_FINAL_508.pdf.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Edward Coppola, edward.coppola@exim.gov, 202–565–3717.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–41 Application for Financial Institution Short-Term, Single-Buyer Insurance.

OMB Number: 3048–0019.

Type of Review: Regular.

Need and Use: The Application for Financial Institution Short-term Single-Buyer Insurance form will be used by financial institution applicants to provide EXIM with the information necessary to determine if the subject transaction is eligible for EXIM insurance coverage.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 215.
Estimated Time per Respondent: 1.6 hours.

Annual Burden Hours: 344.

Frequency of Reporting of Use: Annual.

Dated: November 12, 2024.

Andrew Smith,
Records Officer.

[FR Doc. 2024–26709 Filed 11–14–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2024–3091]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 92–37 Beneficiary Certificate and Agreement for Use With Bank Letter of Credit Short Term Export Credit Insurance Policy, or Financial Institution Buyer Credit Insurance Policy

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Export-Import Bank of the United States (EXIM), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before December 16, 2024, to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV (EIB 92–37) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0016.

FOR FURTHER INFORMATION CONTACT: To request additional information, please

contact Edward Coppola,
edward.coppola@exim.gov; 202–565–3717.

SUPPLEMENTARY INFORMATION: The application tool can be reviewed at: <https://img.exim.gov/s3fs-public/pub/pending/eib24-06.pdf>.

Title and Form Number: EIB 92–37 Beneficiary Certificate and Agreement for use with Bank Letter of Credit Short Term Export Credit Insurance Policy, or Financial Institution Buyer Credit Insurance Policy.

OMB Number: 3048–0022.

Type of Review: Regular.

Need and Use: This form is used when the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan, or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not the exporter. If the need to use this form arises, the insured holds it in the event of a claim, at which time it would submit it to Export-Import Bank along with all other claim documentation. The form provides Export-Import Bank staff with the information necessary to determine the eligibility of the claimed export transaction for coverage.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 15.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 3.75 hours.

Frequency of Reporting of Use: As needed.

Dated: November 11, 2024.

Andrew Smith,

Records Officer.

[FR Doc. 2024–26708 Filed 11–14–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2024–3092]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 92–27, Report of Overdue Accounts Under Short-Term Policies

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to

comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before December 16, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV (EIB 92–27) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0027.

FOR FURTHER INFORMATION CONTACT: To request additional information please contact Edward Coppola, edward.coppola@exim.gov; 202–565–3717.

The form can be viewed at https://img.exim.gov/s3fs-public/pub/pending/Report_of_Overdue_Accounts_eib92-27_2024_508.pdf.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–27, Report of Overdue Accounts Under Short-Term Policies.

OMB Number: 3048–0027.

Type of Review: Regular.

Need and Use: The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short- and medium-term export credit insurance policies. It also alerts EXIM staff of defaults, so they can manage the portfolio in an informed manner.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 745.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours for Respondents: 186.25 hours.

Frequency of Reporting or Use: Monthly, until completed.

Dated: November 12, 2024.

Andrew Smith,

Records Officer.

[FR Doc. 2024–26696 Filed 11–14–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2024–3093]

Agency Information Collection Activities: Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 92–79, Commissioned Broker Application Form

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before December 16, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on WWW.REGULATIONS.GOV (EIB 92–79) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0024.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Jennifer Krause, jennifer.krause@exim.gov, 305.586.2022.

SUPPLEMENTARY INFORMATION: This form is used by insurance brokers to register with EXIM and by EXIM to make a determination of the eligibility of the broker to receive commission payments under Export-Import Bank's credit insurance programs.

The form can be viewed at: https://img.exim.gov/s3fs-public/pub/pending/eib92-79_2024_508.pdf.

Title and Form Number: EIB 92–79, Commissioned Broker Application Form.

OMB Number: 3048–0024.

Type of Review: Regular.

Need and Use: This form is used by insurance brokers to register with EXIM. The form provides EXIM staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs. Our customers will be able to submit this form on paper or electronically.

Affected Public: This form affects entities engaged in brokering export credit insurance policies.

Annual Number of Respondents: 3.

Estimated Time per Respondent: 15 minutes.

Frequency of Reporting or Use: As needed.

Dated: November 12, 2024.

Andrew Smith,

Records Officer.

[FR Doc. 2024–26699 Filed 11–14–24; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK**[Public Notice: 2021–3095]****Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Comment Request; EIB 95–09 Export-Import Bank Letter of Interest Application****AGENCY:** Export-Import Bank of the United States.**ACTION:** Notice of information collection; request for comment.

SUMMARY: The Export-Import Bank of the United States (EXIM), pursuant to the Export-Import Bank Act of 1945, as amended, facilitates the finance of the export of U.S. goods and services. As part of its continuing effort to reduce paperwork and respondent burden, EXIM invites the general public and other Federal agencies to comment on the proposed information collection, as required by the paperwork Reduction Act of 1995.

DATES: Comments must be received on or before December 16, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on www.regulations.gov (EIB 95–09) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–0005 EIB 95–09. The form can be reviewed at https://img.exim.gov/s3fs-public/pub/pending/EIB+95-09+Letter+of+Interest+Application_08_2024.pdf.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Donna Schneider, donna.schneider@exim.gov, 202–565–3612.

SUPPLEMENTARY INFORMATION: The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction and determines whether or not to consider financing that transaction.

Title and Form Number: EIB 95–09 Letter of Interest Application.

OMB Number: 3048–0005.

Type of Review: Regular.

Need and Use: The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction system

prompts and determines whether to consider financing that transaction.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.
Estimated Time per Respondent: 0.75 hours.

Annual Burden Hours: 300.
Frequency of Reporting of Use: On occasion.

Andrew Smith,
Records Officer.

[FR Doc. 2024–26700 Filed 11–14–24; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION**Notice of Requests for Additional Information; Pacific Ports Operational Improvements Agreement**

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled. Interested parties may file written comments, including relevant information and documents, regarding the agreement to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments may be filed up to fifteen (15) days after publication of this notice appears in the **Federal Register**.

Agreement No.: 201227–006.

Title: Pacific Ports Operational Improvements Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc., FMC Agreement No. 011284; West Coast MTO Agreement, FMC Agreement No. 201143; Maersk Line A/S; CMA CGM S.A., American President Lines, LLC.; COSCO SHIPPING Lines Co., Ltd.; Evergreen Line Joint Service Agreement, FMC Agreement No. 011982; Hapag-Lloyd AG, Hapag-Lloyd USA (acting as a single party); HMM Company Limited; Zim Integrated Shipping Services; MSC Mediterranean Shipping Company SA; Matson Navigation Company, Inc.; Ocean Network Express Pte. Ltd.; Wan Hai Lines Ltd.; APM Terminals Pacific, LLC; Fenix Marine Services, Ltd.; International Transportation Service LLC; LBCT LLC dba Long Beach Container Terminal LLC; Everport Terminal Services, Inc.; Total Terminals International LLC; West Basin Container Terminal LLC; Pacific Maritime Services, L.L.C.; SSA (Pier A), LLC; Trapac LLC; Yusen Terminals, LLC;

SSA Terminals, LLC; SSA Terminals (Oakland), LLC; SSA Terminals (Seattle), LLC; Sea Star Stevedoring Company, Inc.; Washington United Terminals, Inc.

By Order of the Federal Maritime Commission.

Dated: November 12, 2024.

David Eng,
Secretary.

[FR Doc. 2024–26672 Filed 11–14–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM**Proposed Agency Information Collection Activities; Comment Request**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting and Recordkeeping Requirements Associated with Regulation W (FR W; 7100–0304).

DATES: Comments must be submitted on or before January 14, 2025.

ADDRESSES: You may submit comments, identified by FR W, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal

holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR W. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under

the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Reporting and Recordkeeping Requirements Associated with Regulation W.

Collection identifier: FR W.

OMB control number: 7100-0304.

General description of collection: The FR W information collection comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b) and the recordkeeping requirements found in sections 223.42(f)(6) and 223.42(g)(3). This information is used to demonstrate compliance with sections 23A and 23B of the Federal Reserve Act (FRA) and to request certain exemptions from the Board. Sections 23A and 23B of the FRA are designed to protect a depository institution from exposure arising from certain transactions with affiliates. They also limit the ability of an insured depository institution to transfer the subsidy arising from access to the federal safety net to such affiliates. Regulation W implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions. The regulation includes provisions requiring the reporting of information to the Board under certain circumstances, to determine whether a depository institution is complying with sections 23A and 23B of the FRA and

Regulation W and whether a proposed transaction is financially sound and consistent with the public interest.

Frequency: Event generated.

Respondents: Insured depository institutions and uninsured member banks.

Total estimated number of respondents: 2.

Total estimated annual burden hours: 56.

Board of Governors of the Federal Reserve System, November 12, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-26706 Filed 11-14-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision the Financial Statements for Holding Companies (FR Y-9 reports; OMB No. 7100-0128) and Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b; OMB No. 7100-0086).

DATES: The revisions are effective December 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements

(which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifiers, FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, FR Y–9CS, and FR 2886b.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections

Collection title: Financial Statements for Holding Companies.

Collection identifier: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

General description of collection: The Board requires bank holding companies, most savings and loan holding companies, securities holding companies, and U.S. intermediate holding companies (collectively, HCs) to provide standardized financial statements through one or more of the FR Y–9 reports. The information collected on the FR Y–9 reports is necessary for the Board to identify emerging financial risks and monitor the safety and soundness of HC operations.

The Consolidated Financial Statements for Holding Companies (FR Y–9C) consists of standardized financial statements for HCs similar to the Call Reports filed by commercial banks. The FR Y–9C collects consolidated data and is filed quarterly by top-tier HCs with total consolidated assets of \$3 billion or more.

The Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), must be submitted quarterly by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs. The report consists of standardized financial statements, including the following schedules: Income Statement, Cash Flow Statement, Balance Sheet, Investments in Subsidiaries and Associated Companies, Memoranda, and Notes to the Parent Company Only Financial Statements.

The Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), is filed semiannually by HCs with total

consolidated assets of less than \$3 billion. In a banking organization with total consolidated assets of less than \$3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report collects basic balance sheet and income data for the parent company, as well as data on its intangible assets and intercompany transactions.

The Financial Statements for Employee Stock Ownership Plan Holding Companies (FR Y–9ES) is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The instructions to each of the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES state that respondent HCs should retain workpapers and other records used in the preparation of the reports for a period of three years following submission. In addition, HCs must maintain in their files a manually signed and attested printout of the data submitted under each form for a period of three years.

The Supplement to the Consolidated Financial Statements for Holding Companies (FR Y–9CS) is a voluntary, free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed from HCs in an expedited manner. The FR Y–9CS data collections are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data requested by the FR Y–9CS would depend on the Board's data needs in any given situation. For example, changes made by the Financial Accounting Standards Board may introduce into generally accepted accounting principles new data items that are not currently collected by the other FR Y–9 reports. The Board could use the FR Y–9CS report to collect these data until the items are implemented into the other FR Y–9 reports.

Frequency: Quarterly, semiannual, annual, and as needed.

Respondents: HCs.

Total estimated number of respondents:

Reporting: FR Y–9C (non-advanced approaches holding companies with less than \$5 billion in total assets): 107; FR Y–9C (non-advanced approaches holding companies with \$5 billion or more in total assets): 236; FR Y–9C

(advanced approaches holding companies): 9; FR Y–9LP: 411; FR Y–9SP: 3,596; FR Y–9ES: 73; FR Y–9CS: 236.

Recordkeeping: FR Y–9C: 352; FR Y–9LP: 411; FR Y–9SP: 3,596; FR Y–9ES: 73; FR Y–9CS: 236.

Estimated average hours per response:

Reporting: FR Y–9C (non-advanced approaches holding companies with less than \$5 billion in total assets): 35.34; FR Y–9C (non-advanced approaches holding companies with \$5 billion or more in total assets): 44.54; FR Y–9C (advanced approaches holding companies): 49.76; FR Y–9LP: 5.27; FR Y–9SP: 5.45; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Recordkeeping: FR Y–9C: 1; FR Y–9LP: 1; FR Y–9SP: 0.50; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Total estimated change in burden: 0.

Total estimated annual burden hours: 114,489.

Collection title: Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Collection identifier: FR 2886b.

OMB control number: 7100–0086.

General description of collection: The FR 2886b reporting form is filed quarterly or annually by Edge and agreement corporations (collectively, Edges or Edge corporations). The Board is responsible for authorizing, supervising, and assigning ratings to Edges. The Board and the Federal Reserve Banks use the data collected by the FR 2886b to supervise Edge corporations and to monitor and develop a better understanding of Edge activities.

Frequency: Quarterly and annually.

Respondents: Edge and agreement corporations.

Total estimated number of respondents:

Reporting: Edge and agreement corporations (quarterly): 25; Edge and agreement corporations (annual): 7.

Recordkeeping: Edge and agreement corporations (quarterly): 25; Edge and agreement corporations (annual): 7.

Estimated average hours per response:

Reporting: Edge and agreement corporations (quarterly): 16.47; Edge and agreement corporations (annual): 16.57.

Recordkeeping: Edge and agreement corporations (quarterly): 12.51; Edge and agreement corporations (annual): 11.52.

Total estimated change in burden: 96.

Total estimated annual burden hours: 1,432.

Current actions: On June 7, 2024, the Board published two separate initial notices in the **Federal Register** (89 FR 48637 and 89 FR 48655) requesting

public comment for 60 days on the extension, with revision, of the FR Y–9 and FR 2886b. The comment period for both notices expired on August 6, 2024, and the Board received one comment letter. After considering the comments received on the proposal, the Board is proceeding with the revisions to the FR Y–9C, FR Y–9LP, and FR 2886b as proposed.

Detailed Discussion of Public Comments

1. ASU 2022–02, “Financial Instruments–Credit Losses (Topic): Troubled Debt Restructurings and Vintage Disclosures”

The commenter is supportive of the proposed revisions to align the regulatory reporting of loan modifications to borrowers experiencing financial difficulty (LMBEFD) on the FR Y–9C, FR Y–9LP, and FR 2886b in accordance with ASU 2022–02. The commenter noted that, in any event, the Board should not modify the proposed FR Y–9 revisions to bring the reporting in line with the outstanding proposal on the Call Reports.¹ The commenter urged the Board to implement ASU 2022–02 across all regulatory reporting forms, including the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051). The commenter stated that aligning all regulatory reports with ASU 2022–02 would align with current practices by banking organizations and would reduce burden by eliminating the necessity to develop and maintain dual processes.

In response, the Board is proceeding with these revisions as proposed to the FR Y–9C, FR Y–9LP, and FR 2886b. Additionally, on June 7, 2024, the Board published in the **Federal Register** separate initial notices that invited comment for 60 days on the extension, with revision, of the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organization (FR Y–7N),² Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314),³ and Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y–11) to propose aligning the reporting of LMBEFD with ASU 2022–02. Additionally, on June 21, 2024, the Board published in the **Federal Register** an initial notice that invited comment for 60 days on the extension, with revision, of the Capital Assessments and Stress Testing Reports

(FR Y–14A/Q/M),⁴ to also propose aligning the reporting of LMBEFD with ASU 2022–02. Separate from this notice, the Board may also finalize the FR Y–7N, FR 2314, FR Y–11, and FR Y–14A/Q/M notices to align with ASU 2022–02, after the comment period has expired.

With regard to aligning the reporting of LMBEFD in accordance with ASU 2022–02 on the Call Report, the Office of the Comptroller of the Currency (OCC), Treasury; Federal Deposit Insurance Corporation (FDIC); and Board (collectively, the agencies) are continuing to evaluate the comments on their September 2023 proposal,⁵ as well, as the comments received on this proposal. Upon conclusion of their review, the agencies will adopt a standard through a subsequent Paperwork Reduction Act (PRA) notice with a public comment period.

The commenter stated that the FR Y–9C’s definition of LMBEFDs should align with the U.S. GAAP definition, specifically Accounting Standards Codification (ASC) Subtopic 310–10 and not scope in any additional modifications. The commenter noted that ASC Subtopic 310–10 requires disclosure of modifications of receivables to borrowers experiencing financial difficulty where the modification results in the form of (1) principal forgiveness, (2) an interest rate reduction, (3) an other-than-insignificant payment delay, or (4) a term extension (or a combination thereof) to be disclosed for financial reporting purposes. The commenter mentioned that it would be helpful if the Board would explicitly confirm the definitional alignment with U.S. GAAP and therefore limit the population of LMBEFD for regulatory reporting purposes to those four modifications. In response to the commenter, the four modifications referenced from ASC Subtopic 310–10 are explicitly included in the FR Y–9Cs definition of LMBEFD and therefore limits the population of LMBEFD accordingly.

2. Other Comments Received

The Board also received comments that were not specifically related to the proposed changes in this proposal. The commenter recommended that the Board should propose and implement changes to the reporting of loans to nondepository institutions (NDFIs) and nonpurpose margin loans on the FR Y–9C to be consistent with the recently finalized Call Report proposal.⁶ The commenter also recommended that any

changes to the definition of ‘Past Due’ should be aligned and implemented concurrently between the FR Y–9, FR 2886b, and the Call Reports.

In response, the Board may propose and implement revisions to the FR Y–9C related to the reporting of NDFI loans and nonpurpose margin loans that would be consistent with the finalized Call Report proposal. Additionally, the Board may also propose changes related to the definition of “Past Due” in the FR Y–9 and FR 2886b that would be aligned and implemented concurrent with the Call Reports. Any future changes to the FR Y–9C and FR 2886b related to the reporting of NDFI loans, nonpurpose margin loans, and the definition of “Past Due” would be subject to the PRA notice and comment process.

Board of Governors of the Federal Reserve System, November 12, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–26707 Filed 11–14–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements (FR 2956; OMB No. 7100–0383).

DATES: The revisions are effective December 16, 2024.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to

¹ See 89 FR 45046 (May 22, 2024).

² See 89 FR 48641 (June 7, 2024).

³ See 89 FR 48639 (June 7, 2024).

⁴ See 89 FR 52042 (June 21, 2024).

⁵ See 88 FR 66933 (September 28, 2023).

⁶ See 89 FR 45046 (May 22, 2024).

collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2956.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Treasury Securities and Agency Debt and Mortgage-Backed Securities Reporting Requirements.

Collection identifier: FR 2956.

OMB control number: 7100–0383.

General description of collection: The FR 2956 collects detailed data on depository institutions' daily transactions trading of marketable U.S. Treasury securities and transactions trading of the debt and mortgage-backed securities (MBS) issued by U.S. federal government agencies including government-sponsored enterprises (agencies). The 2956 has two parts: Part 1 collects data on transactions in U.S. Treasury debt, and Part 2 collects transactions in debt and MBS issued by agencies. Every national bank, state member bank, state non-member bank, savings association, or U.S. branch and agency of a foreign bank filing a Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities (Form G–FIN; OMB No. 7100–0224) with average daily transaction volumes of over \$100 million, for U.S. Treasury debt, or over \$50 million, for agency-issued debt and MBS, during the prior fiscal year is subject to the these reporting requirements. Depository institutions subject to the reporting requirements of the FR 2956 electronically report transactions through the Board's data collection vendor, the Financial Industry Regulatory Authority (FINRA), utilizing its Trade Reporting and Compliance Engine (TRACE). Broker-dealers that are members of FINRA

report transactions pursuant to the FINRA rules, and not the FR 2956. The Board receives data on transactions executed by FINRA's broker-dealer members from FINRA, but the depository institutions subject to the FR 2956 are not members of FINRA and are not subject to its rules.

Frequency: Daily, event-generated.

Respondents: Depository institutions that meet the above reporting thresholds. Prime brokers or depository institutions who file Form G–FIN and are FINRA members acting as an executing broker and that therefore already are subject to TRACE reporting pursuant to FINRA rules are exempt from this reporting requirement.

Total estimated number of respondents: 22.

Total estimated change in burden: (11,000).

Total estimated annual burden hours: 22,000.

Current actions: On July 1, 2024, the Board published a notice in the **Federal Register** (89 FR 54462) requesting public comment for 60 days on the extension, with revision, of the FR 2956. The Board proposed to revise Part 1 of the FR 2956 report, which pertains to the reporting of transactions in U.S. Treasury securities, by updating (i) the timeframe within which a depository institution subject to the reporting requirements of Part 1 of the FR 2956 must report transactions in U.S. Treasury securities, and (ii) for transactions executed electronically, the minimum increment of time that must be used for reporting the execution times. The Board also proposed certain technical and clarifying revisions to Part 2 of the FR 2956 report, intended to make the definitions clearer and to correct an error. The comment period for this notice expired on August 30, 2024. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, November 12, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–26705 Filed 11–14–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Registration of a Securities Holding Company (FR 2082; OMB No. 7100–0347).

DATES: Comments must be submitted on or before January 14, 2025.

ADDRESSES: You may submit comments, identified by FR 2082, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452–3819 or (202) 452–3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve

System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2082. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Registration of a Securities Holding Company.

Collection identifier: FR 2082.

OMB control number: 7100-0347.

General description of collection: The FR 2082 registration form is used whenever a securities holding company (SHC) elects to register to become subject to supervision by the Board pursuant to section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The FR 2082 requests the following from the registering SHC: an organization chart (including all subsidiaries); information regarding certain of the SHC's subsidiaries; shareholder reports and financial statements; information regarding the SHC's shareholders, senior officers and directors; information regarding the methods used by the SHC to monitor and control its operations; information regarding the SHC's foreign subsidiaries that are subject to comprehensive consolidated supervision and the regulatory system in which these foreign subsidiaries operate; and information regarding any other regulatory capital framework to which the SHC is subject. The information collected by the FR 2082 registration form is used by the Federal Reserve System to determine whether the registrant meets the requirements to become a supervised SHC and to complete the registration.

Frequency: Event-generated.

Respondents: Certain nonbank companies that own at least one registered securities broker or dealer and elect to become a supervised SHC.

Total estimated number of respondents: 1.

Total estimated annual burden hours: 8.

Board of Governors of the Federal Reserve System, November 12, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-26703 Filed 11-14-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644; OMB No. 7100-0075).

DATES: Comments must be submitted on or before January 14, 2025.

ADDRESSES: You may submit comments, identified by FR 2644, by any of the following methods:

- *Agency Website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* regs.comments@federalreserve.gov. Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M-4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M-4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2644. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Collection identifier: FR 2644.

OMB control number: 7100-0075.

General description of collection: The FR 2644 is a balance sheet report that is collected as of each Wednesday from an authorized stratified sample of 850 domestically chartered commercial banks and U.S. branches and agencies of foreign banks. The FR 2644 is the only source of high-frequency data used in the analysis of current banking developments. The FR 2644 collects sample data that are used to estimate universe levels for the entire commercial banking sector in conjunction with data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100-0036) and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100-0032) (Call Reports). Data from the FR 2644 and the Call Reports are utilized in construction of weekly estimates of U.S. bank credit, balance sheet data for the U.S. commercial banking sector, and sources and uses of banks' funds, and to analyze current banking developments, including the monitoring of broad credit and funding conditions. The Board publishes the data in aggregate form in the weekly H.8 statistical release, *Assets and Liabilities of Commercial Banks in the United States*, which is followed closely by other government agencies, the banking industry, financial press, and other users. The H.8 release provides a balance sheet for the commercial banking industry as a whole as well as disaggregated data for three

bank groups: large domestically chartered banks, small domestically chartered banks, and U.S. branches and agencies of foreign banks. The data are also used in constructing the commercial bank component of the Federal Reserve's G.19 release, *Consumer Credit*, and the Federal Reserve Bank of New York's Reserve Demand Elasticity.

Proposed revisions: The Board proposes to simplify and reduce the overall reporting burden associated with the FR 2644 report. The Board is not proposing any changes to the items collected on the report at this time. The revision would affect the frequency and associated burden for a group of small banks.

Currently, all respondents file balance sheet data weekly, with data as of close of business Wednesday. While weekly data are necessary from large and regional banks to meet the need by the Board for high frequency and accurate information on banking and credit conditions, smaller banks could report monthly without a significant loss of accuracy. Internal tests conducted on weekly sample data converted to a monthly basis for several size thresholds indicate that the \$5 billion asset size cut off would be unlikely to significantly impact the aggregated data results. However, the reporting burden for these smaller banks would be substantially reduced:

1. Twelve reportable data points versus 52 per year,

2. Expected fewer number of revisions, since data would be monthly rather than weekly, and

3. Marked reduction in failed tolerances and required edit remarks.

The Federal Reserve has been striving to bolster the size of the sample of respondents. Nineteen small banks have left the panel since the last report renewal in April 2022 due to burden, leaving the current panel (as of spring 2024) short of the authorized sample of 850 by about 90 banks. Community banks in particular have fewer resources at their disposal and less staff available for filing the report; the time burden is the most common reason given by these banks when they drop from the sample. The Federal Reserve hopes that, by giving the banks the option to file less frequently, it will be easier to recruit and retain smaller institutions on the panel. Though small in assets, these banks are outsized in their effects on commercial real estate loans, as community banks hold more than twice the outstandings of these loans relative to the large and regional banks.

Thus, the Board proposes that all domestically chartered commercial

banks reporting under \$5 billion in total assets on the latest June 30 Call Report be given the option to report as of the first Wednesday of each month.

Approximately 495 of the current 696 domestically chartered commercial banks would be eligible to report on a one week per month basis. This change in frequency of reporting follows the favorable treatment given smaller institutions on the FFIEC 051 Call Report. Monthly reporting would not be available for foreign-related institutions.

Frequency: Weekly, monthly.

Respondents: Domestically chartered commercial banks, U.S. branches and agencies of foreign banks.

Total estimated number of respondents: 850.

Estimated average hours per response: 2.45.

Total estimated change in burden: (57,722).

Total estimated annual burden hours: 50,568.

Board of Governors of the Federal Reserve System, November 12, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024-26704 Filed 11-14-24; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[Docket No. 9427]

H&R Block; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 16, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the

SUPPLEMENTARY INFORMATION section below. Please write “H&R Block; Docket No. 9427” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary,

600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex T), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Claire Wack (202-326-2836), Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 16, 2024. Write “H&R Block; Docket No. 9427” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “H&R Block; Docket No. 9427” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex T), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely

responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before December 16, 2024. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, a proposed stipulated Decision and Order (“Proposed Order”) to resolve *In the Matter of H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc.* (collectively, “Respondents”). The Proposed Order

has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

This matter involves Respondents' advertising and design of their online tax preparation products ("Online Products"). According to the Commission's complaint, Respondents deceptively market their Online Products by representing to consumers that they can file for free using H&R Block. In addition, the Complaint alleges that Respondents designed their Online Products to encumber consumers attempting to downgrade from a more expensive Online Product to a less expensive or free product, through two unfair practices: (1) requiring consumers wishing to downgrade to first contact customer service to request and complete the downgrade ("customer service contact requirement"), and (2) upon downgrading, deleting all information the consumer has entered ("deletion requirement"). Based on the foregoing, the Commission alleges that Respondents have engaged in, and are engaging in, unfair and deceptive business practices in the advertising, marketing, distribution, and sale of their Online Products, in violation of section 5 of the FTC Act, 15 U.S.C. 45.

The Proposed Order contains injunctive provisions addressing the violations alleged in the Complaint and \$7 million to redress consumers harmed by Respondents' unlawful practices. Section I provides for notice to consumers and staggered elimination of the customer service contact and deletion requirements, with full elimination of these requirements mandated by January 15, 2026. Section I.A. requires Respondents to notify upgrading consumers by January 15, 2025, that, if they later choose to downgrade, their information will not be saved and they will have to start over. This provision will be in place until the deletion requirements are eliminated, January 15, 2026. Section I.B. sets forth the consumer notice that Respondents must give at the point of upgrade, starting January 15, 2026, to describe the new downgrading practices. Section I.C. requires that Respondents allow downgrades to the same extent they permit upgrades. Section I.D. requires Respondents to update their in-product chatbot assistant

to permit downgrades without requiring the participation of a live agent by February 15, 2025. Section I.E. of the Proposed Order requires Respondents to provide another automated means to downgrade that is easily noticeable and persistently available to the consumer within the Online Products by January 15, 2026. Section I.F. prohibits requiring the participation of a live agent to effectuate a downgrade by February 15, 2025. Section I.G. requires that Respondents provide to consumers by January 15, 2025, clear and easily noticeable instructions on how to downgrade. Section I.H. sets forth required changes to the deletion requirement that Respondents must implement by January 15, 2026.

Section II prohibits Respondents from representing that their Online Products are free unless such products are actually free to all consumers, or Respondents clearly and conspicuously disclose the percentage of taxpayers that qualify for the offer. Alternatively, Respondents may disclose that the offer is not free for a majority of taxpayers. Section III prohibits Respondents generally from misrepresenting any material fact concerning the Online Products. Section IV includes \$7 million to redress consumers who were harmed by Respondents' illegal practices.

Section V contains ancillary provisions necessary to effectuate Respondents' payment of the redress amount, while Section VI requires Respondents to provide customer information needed for the administration of consumer redress. Section VII requires Respondents, along with certain employees and successors, to acknowledge receipt of the Proposed Order.

Sections VIII through X of the Proposed Order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondents to provide information or documents necessary for the Commission to monitor compliance with the Proposed Order. Section XI states that the Proposed Order will remain in effect for twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the Complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission.

April J. Tabor,
Secretary.

Concurring Statement of Commissioner Andrew N. Ferguson

Today, the Commission votes to accept for public comment the stipulated Decision and Order in *In re H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc* (collectively, "H&R Block"). H&R Block offers tax preparation and filing services to assist consumers in filing their taxes. The complaint accuses H&R Block of engaging in unfair and deceptive business practices relating to its customer-service-contact requirements, data-wiping practices, and marketing practices.¹

The Commission alleges that H&R Block designed its online products to increase the burden on consumers who wanted to downgrade from a more expensive version of its tax-preparation product to a less expensive version.² H&R Block allegedly required consumers to contact its customer service department either by phone or online chat to downgrade their products. H&R Block also allegedly deleted all the information a consumer previously entered if the consumer decided to downgrade to a less expensive product.³ Finally, the complaint alleges that H&R Block misleadingly marketed a free version of its online tax preparation product while knowing that very few consumers were eligible to use the free version.⁴

I concur in the Commission's order accepting for public comment the stipulated Decision and Order against H&R Block. But I have serious reservations about the merits of Count III—the deceptive marketing of H&R Block's free version of its online tax preparation products. The U.S. Court of Appeals for the Fifth Circuit is currently reviewing a very similar claim in a different case.⁵ The Fifth Circuit is also considering the constitutionality of dual-layer removal protections for the Commission's Administrative Law Judges, a question presented in this case that has divided the Commission.⁶ I

¹ *In re H&R Block Inc., HRB Digital LLC, and HRB Tax Group, Inc*, No. 9427, Complaint at ¶¶ 56–62.

² *Id.* at ¶ 7.

³ *Ibid.*

⁴ *Id.* at ¶¶ 60–61.

⁵ Petition for Review, *Intuit v. FTC*, No. 24–60040 (5th Cir. Jan. 24, 2024), ECF No. 1; Br. for Pet'r at 34–54, *Intuit v. FTC*, No. 24–600040 (5th Cir. Apr. 15, 2024), ECF No. 56.

⁶ See Br. for Pet'r at 27–30, *Intuit v. FTC*, No. 24–60040 (5th Cir. Apr. 15, 2024), ECF No. 56; compare Order Denying Resp'ts' Mot. To Disqualify the Admin. Law Judge, *In the Matter of H&R Block Inc.*,

withhold my final judgment on the lawfulness of the stipulated Decision and Order until I have reviewed public comments and the Fifth Circuit's decision, if it issues in time.

[FR Doc. 2024-26695 Filed 11-14-24; 8:45 am]

BILLING CODE 6750-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-P-2024-02; Docket No. 2024-0002; Sequence No. 52]

Notice of Availability for a Final Environmental Impact Statement (EIS) and Floodplain Assessment and Statement of Findings for the Kenneth G. Ward (Lynden) and Sumas Land Ports of Entry (LPOE) Modernization and Expansion Projects in Lynden and Sumas, Washington

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability (NOA).

SUMMARY: This notice announces the availability of the Final Environmental Impact Statement (EIS), which examines potential environmental impacts from the modernization and expansion of the Lynden and Sumas LPOEs in Lynden and Sumas, Washington. The existing Lynden and Sumas LPOEs are owned and managed by GSA and operated by the U.S. Department of Homeland Security's Customs and Border Protection (CBP). The Final EIS describes the purpose and need for the project; alternatives considered; the existing environment that could be affected; the potential impacts resulting from each of the alternatives; and proposed best management practices and mitigation measures. The Final EIS also includes a Floodplain Assessment and Statement of Findings due to the construction in a floodplain at the Sumas LPOE. The Final EIS identifies the preferred alternatives, including the environmentally preferable alternatives, as summarized below (see the **SUPPLEMENTARY INFORMATION** section of this NOA).

DATES: The Final EIS Wait Period begins with publication of this NOA in the **Federal Register** and will last until December 16, 2024. Any comments regarding the Final EIS must be received

or postmarked by the last day of the 30-day Final EIS Wait Period (see the **ADDRESSES** section of this NOA on how to submit comments). After the Final EIS Wait Period, GSA will issue the Record of Decision (ROD).

ADDRESSES: Comments concerning the Final EIS should be directed to:

- *Email:* lyndenlpoe@gsa.gov or sumaslpoe@gsa.gov. Please include "Lynden and Sumas LPOEs Final EIS" in the subject line of the message.
- *Mail:* ATTN: Patrick Manning, Capital Project Manager, Lynden and Sumas LPOEs EIS, U.S. General Services Administration, Northwest/Arctic Region 10, 1301 A Street, Suite 610, Tacoma, WA 98402.

FOR FURTHER INFORMATION CONTACT: Patrick Manning, Capital Project Manager, GSA at lyndenlpoe@gsa.gov or sumaslpoe@gsa.gov, or at 202-501-4755.

SUPPLEMENTARY INFORMATION: Digital copies of the Final EIS are available at the following GSA project websites: www.gsa.gov/lynden and www.gsa.gov/sumas. GSA has considered stakeholder input and public comments provided during the scoping and Draft EIS comment periods and tenant needs at the LPOEs to develop the Final EIS and determine the preferred alternatives.

GSA's preferred alternative for the Lynden LPOE is to implement Lynden LPOE Alternative 3 (North-South Oriented LPOE Expansion) as described in the Final EIS. This alternative was selected because it would match the orientation of the existing LPOE and facilitate more efficient traffic flow. GSA has identified Lynden LPOE Alternative 3 as the environmentally preferable alternative because the maximum proposed limits of disturbance would be smaller compared to Lynden LPOE Alternative 2 (10.3 acres verses 14.5 acres) and Lynden LPOE Alternative 3 would require lower quantities of fill because of the smaller project footprint and differences in elevation change across the project site.

GSA's preferred alternative for the Sumas LPOE is to implement Sumas LPOE Alternative 4 (Multi-Story Construction LPOE Expansion) as described in the Final EIS. This alternative was selected because the operational space within the Main Building would be consolidated, and the building would use a smaller footprint within the LPOE allowing more space for other LPOE functions and increasing LPOE operational efficiency. This alternative would also add a pedestrian bridge, further increasing employee safety. Sumas LPOE Alternative 2 (Feasibility Study

Preferred Alternative), Sumas LPOE Alternative 3 (Commercial Inspection West), and Sumas LPOE Alternative 4 (Multi-Story Construction LPOE Expansion) would be constructed within the same limits of disturbance (12.6 acres), with the only noted differences being the LPOE's potential alignment, layout, and operating efficiency. Therefore, potential environmental impacts resulting from each of these alternatives are similar and each alternative, including GSA's preferred Sumas LPOE Alternative 4, could be identified as the environmentally preferable alternative.

Background

The existing 4.8-acre Lynden LPOE serves as the port of entry for people and vehicles connecting Lynden, Washington to Aldergrove, British Columbia, Canada. The Lynden LPOE currently operates 16 hours per day, 7 days per week and processes privately owned vehicles (POVs), buses, pedestrians, and permitted commercial traffic. The existing 4.0-acre Sumas LPOE serves as the port of entry for people and vehicles connecting Sumas, Washington to Abbotsford, British Columbia, Canada. The Sumas LPOE operates 24 hours per day, 7 days per week and processes POVs, buses, pedestrians, and commercial traffic.

The purpose of these expansion and modernization projects is for GSA to support the CBP mission through modernizing and expanding the Lynden and Sumas LPOEs.

Accomplishing this purpose would increase the functionality, capacity, operational efficiency, effectiveness, security, sustainability, and safety of the Lynden and Sumas LPOEs. The projects are generally needed to update the current facilities at the Lynden and Sumas LPOEs, which no longer function adequately and cannot meet CBP current operational needs or Program of Requirements.

The existing Lynden and Sumas LPOEs have not undergone major improvements since their initial construction in the late 1980s and do not have sufficient space for modernization and expansion. Both facilities also have configuration and space issues that cause traffic, delays in processing times, and safety and security issues for inspection personnel. Additionally, these facilities do not have the ability to incorporate new technologies as they become available. The projects at the Lynden and Sumas LPOEs are analyzed jointly in this Final EIS due to their proximity (approximately 10 miles) to one another.

et al., FTC Docket No. 9427 (Oct. 18, 2024) and Statement of Chair Lina M. Khan, Joined by Comm'r Alvaro Bedoya, Concurring in the Denial of the Motion, *In the Matter of H&R Block, Inc., et al.*, FTC Docket No. 9427 (Oct. 18, 2024), with Statement of Comm'r Andrew N. Ferguson, *In the Matter of H&R Block, Inc., et al.*, Dissenting in Part and Concurring in the Denial of the Motion, FTC Docket No. 9427 (Oct. 18, 2024).

Operational changes at the Lynden and Sumas LPOEs could impact each other, especially during construction.

GSA has prepared a Final EIS to assess the potential impacts of these expansion and modernization projects.

Alternatives Considered

The EIS considered two action alternatives for the Lynden LPOE and three action alternatives for the Sumas LPOE, along with two construction sequencing options. GSA also considered the No Action Alternatives for each project location.

Lynden Alternative 2 (East-West Oriented LPOE Expansion) would involve potential acquisition of primarily agricultural land to the west of the LPOE, site preparation, and construction to modernize and expand the LPOE. The maximum proposed limits of disturbance for Lynden Alternative 2 would be approximately 14.5 acres.

Lynden Alternative 3 (North-South Oriented LPOE Expansion) would include the same action as Lynden Alternative 2, with a difference of alignment. The maximum proposed limits of disturbance for Alternative 3 would be approximately 10.3 acres.

Sumas Alternative 2 (Feasibility Study Preferred Alternative) would involve potential acquisition of land south and east of the LPOE, site preparation, and construction to modernize and expand the LPOE. The maximum proposed limits of disturbance for Sumas Alternative 2 would be approximately 12.9 acres.

Sumas Alternative 3 (Commercial Inspection West) would include the same action and maximum proposed limits of disturbance as Alternative 2, with a difference of a “flipped” alignment of the commercial inspection facility.

Sumas Alternative 4 (Multi-Story Construction LPOE Expansion) would include the same action and maximum proposed limits of disturbance as Sumas Alternative 2, with a difference of multi-story Main Building being constructed.

The EIS also evaluated two construction sequencing options, which could be implemented under any of the action alternatives considered.

Under the Concurrent Construction option, both ports would remain open during construction. Pedestrian access would be maintained through the ports by utilizing and resetting, as necessary, various access and safety controls. POV access would also be maintained through both ports using various controls, which may require limits on the number of open processing lanes and shifting of POVs to commercial

owned vehicle (COV) lanes for limited times. COVs may need to be detoured at times to other ports to permit adequate space for continued POV processing.

Under the Sequential Construction Option, GSA and CBP considered the potential for closure of the Lynden LPOE. All traffic, pedestrians, POVs, and COVs would be detoured from the Lynden LPOE during the majority of its construction. Once the modernized and expanded Lynden LPOE is reopened, construction that impacts traffic would begin on the Sumas LPOE. The Sumas LPOE would remain open to pedestrians and POVs during construction to the greatest extent possible. COVs would be detoured from the Sumas LPOE to other LPOEs during portions of the construction period.

The Final EIS addresses the potential environmental impacts of the proposed alternatives on environmental resources including land use; water resources; biological resources; geology, topography, and soils; air quality, climate change, and greenhouse gases; human health and safety; infrastructure and utilities; traffic and transportation; noise and vibration; socioeconomic; and environmental justice and protection of children’s health and safety. Based on the analysis presented in the Final EIS, impacts to all resource areas would be less-than-significant (*i.e.*, negligible, minor, or moderate) adverse or beneficial. Impact reduction measures are presented in the Final EIS to reduce potential adverse effects.

GSA conducted formal consultation with the Washington State Department of Archaeology and Historic Preservation (referred to as the State Historic Preservation Office [SHPO]) as required under Section 106 of the National Historic Preservation Act to determine impacts to historic properties. GSA determined that no historic properties would be affected by the proposed projects. SHPO concurred with GSA’s determination.

GSA determined that implementation of any combination of Lynden and Sumas action alternatives may affect but would not likely adversely affect the yellow-billed cuckoo and monarch butterfly. Therefore, GSA sent an informal consultation letter in accordance with Section 7 of the ESA regarding the potential impacts to protected species from the Proposed Action to the U.S. Fish and Wildlife Service (USFWS) on July 31, 2024; and a follow-up email on September 18, 2024. The USFWS did not reply or provide written concurrence with GSA’s determination within the 60-day required timeframe for a response.

GSA sent Farmland Conversion Impact Rating Forms to the Natural Resources Conservation Service (NRCS) on July 31, 2024; and a follow-up email on September 18, 2024 to determine if mitigation to reduce potential impacts to farmland or farmland soils from the proposed modernization and expansion of the Lynden and Sumas LPOEs is required. The NRCS has not responded to date; however, GSA will continue to coordinate with NRCS to determine if mitigation for potential impacts to Farmland Protection Policy Act protected soils is required.

The Sumas LPOE project area is located within the 1-percent-annual-chance floodplain (also referred to as the base flood or 100-year flood) and 0.2-percent-annual-chance floodplain (also referred to as the 500-year flood). In compliance with Executive Order 11988 (Floodplain Management), GSA prepared a Floodplain Assessment and Statement of Findings addressing potential impacts on floodplains, which is included in the Final EIS for public review and comment. As described in the Final EIS, GSA would follow Federal, State, and local regulatory compliance requirements and incorporate design standards at the Sumas LPOE to minimize impacts to floodplains.

Anamarie Crawley,

*Director, Facilities Management Division,
Northwest/Arctic Region 10, U.S. General
Services Administration.*

[FR Doc. 2024–26296 Filed 11–14–24; 8:45 am]

BILLING CODE 6820–DL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; OCSS–75 Tribal Child Support Services Annual Data Report (Office of Management and Budget #: 0970–0320)

AGENCY: Office of Child Support Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Services (OCSS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is requesting a 3-year extension of the form OCSS–75–Tribal Child Support Services Annual Data Report (OMB # 0970–0320, expiration May 31, 2025). We are requesting minor changes to this form.

DATES: Comments due January 14, 2025. 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 infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:
Description: The data collected by form OCSS–75 are used to prepare the OCSS preliminary and annual data reports. In addition, tribes administering OCSS programs under title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report as part of the OCSS–75 report and submit it annually. The only changes to this report include updating an email

address and changing the name from the Office of Child Support Enforcement (OCSE) to the Office of Child Support Services (OCSS) throughout the form. This change includes acronyms.

Respondents: Tribal Child Support Services Organizations or the Department/Agency/Bureau responsible for Child Support Services in each Tribe.

ANNUAL BURDEN ESTIMATES				
Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
OCSS–75	63	1	40	2,520

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: Title IV–D of the Social Security Act as required by CFR 45 309.170(b).

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024–26688 Filed 11–14–24; 8:45 am]
BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Child Care Improper Payments Data Collection Instructions (Office of Management and Budget #0970–0323)

AGENCY: Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families is proposing revisions to an approved information collection, the Child Care Improper Payments Data Collection Instructions (OMB #0970–0323, expiration 1/31/2025). In addition to the proposed changes, we are requesting a 3-year extension.

DATES: *Comments due* January 14, 2025. 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 infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:
Description: Section 2 of the Payment Integrity Information Act of 2019 (PIIA) requires Federal agencies to review their programs and activities to identify those that may be susceptible to significant improper payments, publish improper payment estimates for those programs and activities, and submit a report on actions taken to reduce improper payments. Subpart K of 45 CFR part 98 of the Child Care and Development Fund (CCDF) requires states, the District of Columbia, and Puerto Rico to prepare and submit a report once every 3 years with data on the errors occurring in the administration of CCDF grant funds. The Child Care Improper Payments Data Collection Instructions (DCI) provides instructions and guidance to states to implement the CCDF error rate methodology.

The Office of Child Care (OCC) is completing the sixth 3-year cycle of case record reviews to meet the requirements

for reporting under PIIA. The current data collection forms and instructions expire on January 31, 2025. As part of the renewal process, OCC has revised the forms and instructions with minor changes that do not change the methodology, but that provide additional guidance and clarification to facilitate complete and accurate data submissions. Existing instructions and examples were updated, expanded, or rewritten to clarify the information requested. Several formatting changes were made to streamline instructions. The instructions and forms were also reviewed for alignment with the 2024 CCDF Final Rule. A description of changes made in each section can be found in the Introduction section of the revised DCI.

OCC is particularly interested in feedback about updates made to the following sections:

- **Burden hours:** OCC proposes to revise the estimated burden hours for the Sampling Decisions, Assurances, and Fieldwork Preparation Plan (SDAP), the ACF–403 Record Review Worksheet (RRW), the ACF–404 State Improper Payments Report, and the ACF–405 State Improper Payments Report Corrective Action Plan (CAP). The current burden hours have not been revised for several years. OCC recognizes that many factors have changed since states first began error rate reviews, including increased use of technology by states to aid data collection and reporting efforts, greater organizational capacity to conduct ongoing error rate reviews, and OCC’s use of data reporting systems to reduce manual reporting burden on states.

For this reason, OCC conducted a survey in the spring of 2024 to gather information about states’ experiences

completing the error rate reports, including their estimated burden hours for each report. All CCDF Lead Agencies required to submit the error rate reports were invited to participate, and 56 percent (29 out of 52 Lead Agencies) responded. Lead Agency respondents represented a geographically diverse group of states with a range in size as defined by the numbers of children and families served by CCDF. There were expected variations in responses which may reflect differences in states' administrative structures and complexity, staff capacity, reporting technology, interpretation of the survey questions, and other factors. However, even considering the range of responses and any outliers, OCC determined that the burden hours estimates should be lowered to reflect the survey results. In addition, to more accurately account for the work described by survey respondents, OCC further broke out the

estimated burden hours for the RRW into the following two parts: (1) the estimated hours needed for states to customize the standard RRW template to reflect their state's rules, policies, and procedures; and (2) the estimated hours needed for states to use the customized RRW to conduct each of the 276 case reviews.

• **Root Causes of Error:** OCC proposes to standardize the root causes of error in Item 19 of the ACF-404 State Improper Payment Report by creating a drop-down list of error cause choices. Currently, Lead Agencies enter free text to describe the causes of errors in their Federal error rate reviews. While this approach allows flexibility at the individual reporting level, inconsistent terminology and descriptions across states and reporting cycles makes it difficult to analyze, report, and track national and state-level error trends over time. Further, the current approach can

add additional burden to states during the report review and approval process because clarifications about error cause descriptions are often requested by Federal reviewers. We request comment on whether the proposed list of standardized error causes would meet Lead Agency reporting needs, and if not, what additional or different error causes should be included.

Respondents: CCDF grantees from states, the District of Columbia, and Puerto Rico.

Annual Burden Estimates: Burden estimates are shown based on the total burden over a 3-year period divided by three to show average annual burden estimates.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Sampling Decisions, Assurances, and Fieldwork Preparation Plan	52	1	35	1,820	607
ACF-403 Record Review Worksheet: <i>template</i>	52	1	63	3,276	1,092
ACF-403 Record Review Worksheet: <i>case record reviews</i>	52	276	3.0	43,056	14,352
ACF-404 State Improper Payments Report	52	1	66	3,432	1,144
ACF-405 State Improper Payments Report Corrective Action Plan	6	^a 2	24	288	96
Estimated Total Annual Burden Hours:					17,291

^a The total number of responses per respondent over 3 years ranges from 1–3, depending on how long it takes respondents to reduce the Improper Payment Rate to below the threshold. Respondents submit a *Corrective Action Plan* that covers a 1-year period; at the end of each year, if respondents have not reduced the Improper Payment Rate to below the threshold, they submit a new *Corrective Action Plan* for the following year. An average of two responses per respondent over a 3 year period is used to calculate annual burden estimates.

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: 45 CFR part 98 subpart K.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-26684 Filed 11-14-24; 8:45 am]

BILLING CODE 4184-87-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Administration of Psychotropic Medication to Unaccompanied Children (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services is inviting public comment on the proposed collection. The request consists of two forms that will allow the Unaccompanied Children (UC) Bureau to obtain informed consent from authorized consenters and informed

assent or agreement from unaccompanied children for the administration of psychotropic medication.

DATES: Comments due December 16, 2024. The Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed

requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR UC Bureau is proposing two new forms: *Psychotropic Medication Informed Consent* (Form MMH-1) and *Psychotropic Medication Assent Notice* (Form MMH-2). The proposed information collection is necessary to allow the ORR UC Bureau to comply with a court order and improve processes for the administration of psychotropic medication. On June 29, 2018, Plaintiffs filed their Federal class action lawsuit in the Central District of California, western division, captioned *Lucas R. et al. v. Becerra et al.* (Case No. 2:18-CV-

05741 DMG PLA), asserting claims under the Flores consent decree, the Trafficking Victims Protection Reauthorization Act, the Due Process clause, and the First Amendment. Plaintiffs allege violation of unaccompanied children rights in decisions regarding family reunification, placement in restrictive facilities, services for children with disabilities, administration of psychotropic medication, and access to legal assistance. On May 3, 2024, the Court granted final approval for the settlement agreements of the Plaintiffs' claims for disabilities, psychotropic medication, and legal assistance. As part of the settlement agreement for the

psychotropic medication claim, ORR is required, whenever possible, to obtain informed consent for the administration of psychotropic medication and provide certain information to the authorized consenter. Additionally, ORR is required to provide a written notice and obtain informed assent or agreement from children aged 14 or older before administering psychotropic medication. The psychotropic medication settlement agreement must be fully implemented by August 3, 2026, but data collection must be implemented by February 3, 2025, to ensure compliance with the Agreement.

Respondents: Care provider grantees and contractors.

ANNUAL BURDEN ESTIMATES				
Form	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Psychotropic Medication Informed Consent (Form MMH-1)	300	2	1.50	900
Psychotropic Medication Assent Notice (Form MMH-2)	300	1	0.75	225

Estimated Total Annual Burden Hours: 1,125.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; 45 CFR part 410; *Flores v. Reno* Settlement Agreement, No. CV85-4544-RJK (C.D. Cal. 1996); *Lucas R. et al. v. Becerra et al.* (Case No. 2:18-CV-05741 DMG PLA) Psychotropic Medication Settlement Agreement.

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024-26690 Filed 11-14-24; 8:45 am]
BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-4624]

Nonclinical Safety Assessment of Oligonucleotide-Based Therapeutics; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Nonclinical Safety Assessment of Oligonucleotide-Based Therapeutics.” FDA is publishing this draft guidance which, when finalized, will provide recommendations on approaches for the

nonclinical safety evaluation of oligonucleotide-based therapeutics (ONTs) to support clinical development and marketing of these products. ONTs present unique challenges and opportunities in the nonclinical evaluation of safety that differ in many regards from those appropriate for small molecule drugs or therapeutic proteins.

DATES: Submit either electronic or written comments on the draft guidance by January 14, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that

identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2024-D-4624 for “Nonclinical Safety Assessment of Oligonucleotide-Based Therapeutics.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ronald Wange, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm.

3342, Silver Spring, MD 20903, 301–796–1304.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Nonclinical Safety Assessment of Oligonucleotide-Based Therapeutics.” ONTs represent a rapidly evolving therapeutic modality, which is seeing application to a broad range of indications, including rare diseases, and have the potential to act on therapeutic targets that are not amenable to the action of small molecule drugs or therapeutic proteins. To further support the development of ONTs, FDA is publishing this draft guidance which, when finalized, will assist sponsors in optimizing the design of their nonclinical development package for ONTs.

The scope of the draft guidance includes single-stranded or double-stranded ONTs created synthetically or derived naturally, with native or modified backbone or nucleoside structures that increase or decrease expression and/or function of proteins. Examples of included oligonucleotides are antisense, small interfering RNA, microRNA, transfer RNAs, decoys, and aptamers. Immune stimulatory oligonucleotides (e.g., CpG motifs acting via Toll-like receptors) are excluded, as are Center for Biologics Evaluation and Research-regulated ONTs (e.g., DNA/RNA vaccines, messenger RNA, virally delivered ONTs, and RNA used for gene editing).

ONTs present unique opportunities and challenges in the nonclinical evaluation of safety that differ in many regards from that appropriate for small molecule drugs or therapeutic proteins. This draft guidance provides specific recommendations on approaches for the nonclinical safety evaluation of ONTs to support clinical development and marketing of these products. The draft guidance, when finalized, will provide recommendations on the nonclinical evaluation of oligonucleotides in multiple areas, including genotoxicity, safety pharmacology, general toxicity, carcinogenicity, and reproductive and developmental toxicity. These recommendations have been developed based on industry best practices and Agency experience to date with this category of drug products.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Nonclinical Safety Assessment of Oligonucleotide-Based Therapeutics.” It

does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 50 and 56 pertaining to protection of human subjects have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 58 pertaining to good laboratory practice for nonclinical laboratory studies have been approved under OMB control number 0910–0119. The collections of information in 21 CFR 201.56 and 201.57 pertaining to content and format of labeling for human prescription drug and biological products have been approved under OMB control numbers 0910–0572. The collections of information in 21 CFR parts 210 and 211 pertaining to current good manufacturing practice have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 312 relating to the content and format of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to the content and format of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 relating to the content and format of biologics license applications are approved under OMB control number 0910–0338. The collections of information for MEDWATCH Adverse Event and Product Experience Reporting system have been approved under OMB control number 0910–0291.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: November 6, 2024.

Kimberlee Trzeciak,

*Deputy Commissioner for Policy, Legislation,
and International Affairs.*

[FR Doc. 2024-26682 Filed 11-14-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for Licensing or Collaboration: Novel Kinase Inhibitory Aplithianines

AGENCY: National Institutes of Health,
HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the licensing and/or collaboration opportunities for the inventions listed below, which are owned by an agency of the U.S.

Government and are available for licensing and/or collaboration to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT:

Inquiries related to these licensing or collaboration opportunities should be directed to: Taryn Dick, Ph.D., M.B.A., Technology Transfer Manager, NCI, Technology Transfer Center, Email: taryn.dick@nih.gov or Phone: 301-631-3007.

SUPPLEMENTARY INFORMATION:

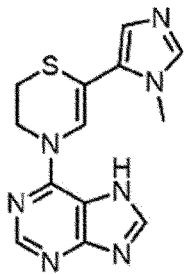
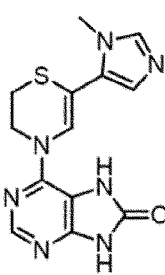
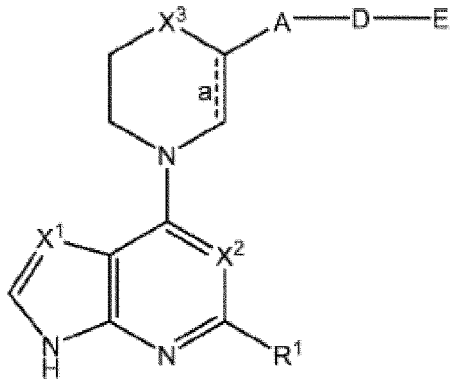
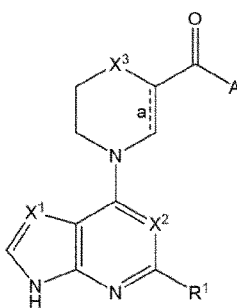
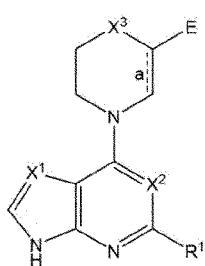
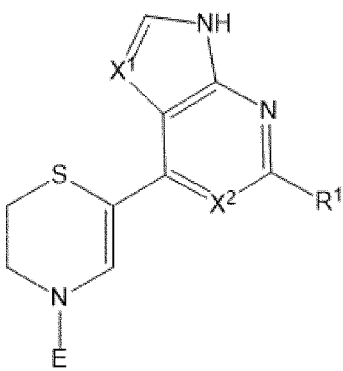
Researchers at the NCI seek licensing and/or co-development research collaborations for a class of novel aplithianine-derived small molecule analogs that compete with ATP for binding on a range of clinically relevant kinases. In 2022, the NCI Molecular Targets Program (MTP) completed a screen of approximately 150,000 pre-fractionated natural products from the NCI Program for Natural Product Discovery (NPNPD). From this screen, a class of active compounds, named Aplithianines A & B (isolated from the marine organism *Aplidium* sp.), showed

broad potential applicability to numerous kinases of importance, including but not limited to:

- Oncogenic gene fusion DNAJB1-PRKACA (PKADJ):
 - Implicated in an ultra-rare adolescent liver cancer.
- Wild type protein kinase A (PKA):
 - Implicated in Cushing's Disease.
- Protein kinase G (PKG):
 - Potential treatment of malaria.
- Ccdc2-like kinases (CLK) 1 and 2:
 - Implicated in gastric cancer.
- DYRK family of kinases:
 - Implicated in gastric or colon cancer as well as infections caused by a protozoa or parasites.

This technology describes the Original Family of compounds filed. Subsequent to this filing, two additional cohorts of related, but patentably distinct cohorts of compounds, have been filed. Both the Second and the Third Cohorts comprise the same chemical scaffold of the broadest generic formula of this Original Family but represent patentably distinct subgenus formulas.

BILLING CODE 4140-01-P

Structural Representatives:		
	Aplithianines A	Aplithianines B
Parent natural products isolated from the marine organism <i>Aplidium</i> sp.		
NIH Reference Number: E-044-2022 patent family ("Original Family"): The claims are directed to compositions of matter encompassing this broad Markush structure.	 (I)	
NIH Reference Number: E-202-2023 patent family ("Second Cohort"): The claims are directed to compositions of matter encompassing these broad Markush structures.	 (I)	 (II)
NIH Reference Number: E-162-2024 Patent family ("Third Cohort"): The claims are directed to compositions of matter encompassing this broad Markush structures.	 (Ia)	

not promiscuous kinase inhibitors. The subject kinase inhibitors have broad potential commercial applicability's for cancer, immune suppression, preventing organ rejection, treating diabetic neuropathic pain, malaria, or protozoa infection. To date, there are no approved therapeutics targeting DNAJB1-PRKCA, an oncogenic gene fusion, which is ubiquitously and exclusively detected in the tumors of patients with ultra-rare fibrolamellar hepatocellular carcinoma FLHCC.

This Notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404.

NIH Reference Number: E-044-2022.

Related Technologies: E-202-2023 and E-162-2024.

Product Type: Therapeutic.

Therapeutic Area(s): Oncology, Infectious Disease, Rare/Neglected Diseases.

Potential Commercial Applications:

- Gastric cancer.
- Ultra-rare adolescent liver cancer.
- Solid cancers susceptible to kinase inhibitors.

- Cushing's Disease.
- Transplantation.
- Diabetic neuropathic pain.
- Malaria.
- Protozoa infection.

Competitive Advantages:

- Applicability to numerous clinically relevant kinases, including:
 - Oncogenic gene fusion DNAJB1-PRKACA (PKADJ).
 - Wild type protein kinase A (PKA).
 - Protein kinase G (PKG).
 - Cdc2-like kinases (CLK) 1 and 2.
 - DYRK family of kinases.
- Applicable to a range of kinases, but are not promiscuous kinase inhibitors.
- Broad potential commercial applicability for several blockbuster indications including:
 - cancer, immune suppression, transplantation, diabetic neuropathic pain, malaria, and protozoa infection.

• No approved therapeutics targeting DNAJB1-PRKCA.

Publications:

• O'Keefe BR, et al. Biochemical Discovery, Intracellular Evaluation, and Crystallographic Characterization of Synthetic and Natural Product Adenosine 3',5'-Cyclic Monophosphate-Dependent Protein Kinase A (PKA) Inhibitors. PMID: 37082750, <https://pubmed.ncbi.nlm.nih.gov/37082750/>.

• O'Keefe BR, et al. Discovery and Synthesis of a Naturally Derived Protein Kinase Inhibitor that Selectively Inhibits Distinct Classes of Serine/Threonine Kinases. PMID: 37843072, <https://pubmed.ncbi.nlm.nih.gov/37843072/>.

Patent Status:

- E-044-2022: PCT/US2023/070304.
- E-202-2023: PCT/US2024/038376.

- E-162-2024: 63/672,577.

Development Stage: Pre-clinical (*in vivo* validation).

Dated: November 12, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024-26663 Filed 11-14-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; NCCIH Conference Grant (R13 Clinical Trial Not Allowed).

Date: December 10, 2024

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Michael E. Authement, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, 6707 Democracy Boulevard, Bethesda, MD 20817, michael.authement@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: November 8, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-26562 Filed 11-14-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for Licensing or Collaboration: Improved Methods for Cryopreservation of Cells, Tissues, and Organs

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Eye Institute (NEI), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of licensing and/or collaboration opportunities for the inventions listed below, which are owned by an agency of the U.S. Government and are available for licensing and/or collaboration to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT:

Inquiries related to these licensing and/or collaboration opportunities should be directed to: Hiba Alsaffar, Ph.D., Technology Transfer Manager, NCI, Technology Transfer Center, Email: hiba.alsaffar@nih.gov or Phone: 240-276-7489.

SUPPLEMENTARY INFORMATION:

Researchers at the NEI seek licensing and/or co-development research collaborations for improved methods of cryopreservation of cells, tissues, and organs via FOXO1 activation. The cornea is a critical part of the eye that helps prevent debris from entering and refracts light for proper vision. Corneal disorders such as keratoconus, Fuchs dystrophy, and infectious keratitis require corneal transplantation to restore vision. Approximately 185,000 corneal transplants are performed annually worldwide to treat corneal disorders. Corneas for those transplants are supplied by donor eyes that are stored at eye banks in select countries. Currently, Optisol-GS™ is the corneal preservation solution that is most widely used to store donated corneas at eye banks. Per NEI guidelines, corneas preserved in Optisol-GS™ have a 12-day shelf life. With the high demand for corneal transplantations worldwide, a 12-day shelf life cannot meet the requirement for long term cryogenic storage of corneas at large eye banks. Scientists at the NEI have developed improved methods for cryopreservation of cells, tissues, and organs (with focus of corneal tissue/cells) that increases

cold storage shelf life 2.5 times longer than current market products.

This Notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404.

NIH Reference Number: E-013-2021.

Related Technologies: E-073-2018.

Product Type: Medical/Research Tool.

Therapeutic Area(s): Eye, Ear, Nose or Throat.

Potential Commercial Applications:

- Corneal biobanks.
- Transplantation to remedy a wide range of corneal disorders.
- Improved method of cryopreserving corneal cells and other cell types.

Competitive Advantages:

- Superior corneal shelf life: 16-day compared to 12-day maximum shelf-life of current market products.

- Better meets requirement for larger eye bank cryopreservation.

- 95% endothelial cell survival after 4 weeks in cold storage.

Patent Status: National Stage Filings in the US, CA, AU, CN, EP.

Development Stage: Discovery.

Dated: November 12, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024-26661 Filed 11-14-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276-0361.

Comments are invited on: (a) whether the proposed collections of information are 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Regulations To Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a (OMB No. 0930-0242)—Revision

Section 1955 of the Public Health Service Act (42 U.S.C. 300x-65), as amended by the Children's Health Act of 2000 (Pub. L. 106-310) and sections 581-584 of the Public Health Service Act (42 U.S.C. 290kk *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106-554)), set forth various provisions which aim to ensure that religious organizations are able to

compete on an equal footing for federal funds to provide substance use services. These provisions allow religious organizations to offer substance use services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUBG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance use treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum flexibility in implementation and impose minimum burden.

No changes are being made to the regulations or the information collection provisions. A minor change reflecting current state reporting has been made to the annual burden estimates in 54.8(c)(4) resulting in total burden costs reported decreasing.

Information on how states comply with the requirements of 42 CFR part 54 was approved by OMB as part of the Substance Use Prevention and Treatment Block Grant FY 2019-2021 annual application and reporting requirements approved under OMB control number 0930-0168.

42 CFR citation and purpose	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
Part 54—States Receiving SUBG and/or Projects for Assistance in Transition from Homelessness					
Reporting:					
96.122(f)(5) Annual report of activities the state undertook to comply with 42 CFR part 54	60	1	60	1	60
54.8(c)(4) Total number of referrals to alternative service providers reported by program participants to States (respondents).					
SUBG	7	7 (avg.)	47	1	47
PATH	10	5	50	1	50
54.8 (e) Annual report by PATH grantees on activities undertaken to comply with 42 CFR part 54	56	1	56	1	56
Disclosure:					
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider.					
SUBG	60	1	60	.05	3
PATH	56	1	56	.05	3
Recordkeeping:					

42 CFR citation and purpose	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	60	1	60	1	60
Part 54—Subtotal	116		389		279
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance use prevention, treatment and recovery services					
Reporting:					
54a.8(c)(1)(iv) Program participant notification to state or local government of a referral to an alternative provider	25	4	100	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals. (NOTE: This notification will occur during the course of the regular reports that may be required under the terms of the funding award)	20	2	40	.25	10
Disclosure:					
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	1,460	1	1,460	1	1,460
Part 54a—Subtotal	1,505		1,600		1,478
Total	1,621		1,989	1	1,757

Send comments to SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57-A, Rockville, Maryland 20857, OR email a copy to samhsapra@samhsa.hhs.gov. Written comments should be received by January 14, 2025.

Krishna Palipudi,

Social Science Analyst.

[FR Doc. 2024-26641 Filed 11-14-24; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG-2021-0183]

Final Programmatic Environmental Impact Statement for the Expansion and Modernization of Base Seattle

AGENCY: Coast Guard, DHS.

ACTION: Notice of Availability of the Final Programmatic Environmental Impact Statement Expansion and Modernization of Base Seattle.

SUMMARY: The U.S. Coast Guard (Coast Guard) announces the availability of the Final Programmatic Environmental Impact Statement (PEIS) for the Expansion and Modernization of Base Seattle. In accordance with National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) NEPA implementing regulations, the Final PEIS analyzes the potential environmental and socioeconomic

impacts, and identifies related mitigation measures, associated with land acquisition, facility and infrastructure modernization, and continued operation to support current and future Coast Guard missions at Base Seattle.

DATES: The Coast Guard will not issue a final decision on the proposed action until at least December 16, 2024, or at least 30 days after the Environmental Protection Agency publishes its Notice of Availability of this Final PEIS in the **Federal Register**.

ADDRESSES: The complete text of the Final PEIS is available in the docket, which can be found by searching the docket number USCG-2021-0183 using the Federal eRulemaking Portal at <https://www.regulations.gov> or at <https://www.dcms.uscg.mil/NEPA>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be sent to U.S. Coast Guard, Shore Infrastructure Logistics Center, Environmental Management Division, ATTN: Dean Amundson, 1301 Clay Street, Suite 700N, Oakland, CA 94612-5203. ; phone 510-637-5541; email BaseSeattlePEIS@uscg.mil.

SUPPLEMENTARY INFORMATION: The Final PEIS was prepared in accordance with the requirements of NEPA, the CEQ regulations implementing NEPA (40 CFR 1500-1508), DHS procedures for implementing NEPA (DHS Instruction Manual 023-01-001-01 (series)), Coast Guard Environmental Planning Policy (Commandant Instruction

[COMDTINST] 5090.1), and other applicable DHS and Coast Guard policies and guidance. A Notice of Intent (NOI) to prepare the PEIS was published in the **Federal Register** on May 7, 2021 (86 FR 24637). On October 11, 2022, the Coast Guard published a Notice of Availability (NOA) and a request for comments on the Draft PEIS (87 FR 61344). In response to a comment in the docket the Coast Guard extended the public comment period until December 16, 2022, which was announced in the **Federal Register** (87 FR 73011) and in local newspapers on November 28, 2022.

The purpose of the proposed action is to provide adequate and efficient shore facilities and infrastructure at Base Seattle to support the Coast Guard's execution of its current and future statutory missions, pursuant to 14 United States Code (U.S.C.) 102. Base Seattle is the largest Coast Guard installation in the Pacific Northwest and is an essential facility to support Coast Guard missions in the Pacific Northwest and polar (the Arctic and Antarctica) areas of responsibility (AOR), now and for the foreseeable future.

The Coast Guard identified three reasonable alternatives that would meet the purpose and need of the proposed action. The PEIS analyzed the potential environmental and socioeconomic impacts associated with the proposed action, action alternatives and the no action alternative; including direct, indirect, and cumulative effects, and

potential mitigation measure to minimize impacts. The Coast Guard has actively considered the full range of alternatives when determining the preferred alternative for the Final PEIS. The Coast Guard continues to consider each alternative and will document the Guard's decision as part of the Record of Decision.

The Draft PEIS identified Alternative 1 as the Coast Guard's preferred alternative. Based on public comments, the Coast Guard conducted additional technical analysis which provided greater detail about the context and intensity of environmental impacts. While the significant findings remained consistent, additional information was obtained to better inform the Coast Guard decision-maker. The socioeconomic analysis considered each of the alternatives, as well as different land acquisition options, based on acreage, within each alternative to establish a range of impacts. The socioeconomic study found that the magnitude of socioeconomic impacts to the Port of Seattle are largely dependent upon the amount of acreage that is acquired.

Therefore, acquiring fewer acres of land in Alternative 1 would cause less long-term socioeconomic impacts than acquiring more acres of land in Alternatives 2 or 3. Additionally, Alternative 1 is the environmentally preferable alternative as it avoids and minimizes impacts to biological, visual, and cultural resources. Finally, Alternative 1 would enable the Coast Guard to more quickly achieve the purpose of the proposed action. Consequently, Alternative 1 remains the Coast Guard's preferred alternative in the Final EIS.

The details of all three Action Alternatives are provided in Section 2.5. The Socioeconomic Report can be found in Appendix R of the Final PEIS.

Alternative 1: Modernization with Additional Land and Two Berths at Terminal 46 (Preferred Alternative). Alternative 1 would involve acquisition of land to the north at Terminal 46, including onshore development and access to existing berth space for two Coast Guard cutters. While additional work would occur on the existing Base property, this alternative would provide a single, large piece of property that would enable efficient expansion of Base facilities while providing the capability to incorporate the most effective Anti-Terrorism/Force Protection (AT/FP) setbacks of all the alternatives. Acquiring two existing, structurally adequate berths would be the most cost-effective and efficient action and would reduce potential

effects by eliminating the need to construct new berths. Under Alternative 1, approximately 27 to 54 acres of land would be acquired from the Port of Seattle, including the 1.1-acre Belknap property, and between 26 and 53 acres from the Port of Seattle at Terminal 46. The acquired property at Terminal 46 would provide 1,070 linear feet of new Coast Guard berthing space. The alternative would provide flexible space for parking, equipment staging, emergency storage, and other similar or related uses would distributed throughout the current Base boundaries as well as on acquired property at Terminal 46 acquired property. Alternative 1 would include construction of several new facilities on Base.

Alternative 2: Modernization with Additional Land from Terminals 30 and 46. Alternative 2 would expand Base Seattle both to the north and south. Under Alternative 2, many of the proposed infrastructure modernization and expansion elements would occur within the current Base boundaries or on land acquired at Terminal 30, and berthing requirements would be satisfied by the development of two new berths to the south at Pier 35 E/F. Land acquired at Terminal 46 would be used for active cutter support services, material laydown areas for cutter materials and equipment, and AT/FP setbacks. Existing Base Seattle deficiencies would be resolved, AT/FP measures would be implemented, and aging infrastructure would be upgraded to meet current building codes (including seismic). Land acquisition under Alternative 2 would include 21.5 to 29.5 acres of land with the majority being 13.5 to 21.5 acres at Terminal 30 and would include Jack Perry Memorial Park. Two new berths would provide 1,120 linear feet (LF) of wharf space. The berths would be constructed with one berth on currently owned Coast Guard property and a second berth constructed on property acquired at Terminal 30. Flexible space for parking, equipment staging, emergency storage, and other similar or related uses would be distributed throughout the current Base boundaries as well as a portion of the newly acquired property at Terminal 30. Alternative 2 would include construction of several new facilities on Base.

Alternative 3: Modernization with Additional Land and One Berth at Terminal 46. Alternative 3 would expand Base Seattle to the north through land acquisition at Terminal 46 and would infill the current Base footprint by acquiring currently leased properties. Under Alternative 3, many of

the proposed infrastructure modernization and expansion elements would occur within the current Base boundaries and on land acquired at Terminal 46. These elements include satisfying berthing requirements with construction of one new berth within the current Base boundaries (Pier 35 E) and one additional existing berth at Terminal 46. Under Alternative 3, existing Base Seattle deficiencies would be resolved, AT/FP measures upgraded, and aging infrastructure would be upgraded to meet current building codes (including seismic). Under Alternative 3, the minimum acquired land would total approximately 24.25 to 32.25 acres, with the majority of land 21.75 to 29.75 acres at Terminal 46. Under this alternative, one existing berth totaling 560 LF would be acquired at Terminal 46. No further modifications are required for this berth. A new berth would be constructed on Coast Guard property at Pier 35 E. Work would likely include typical construction for waterfront facilities, such as pile and decking installation and possibly dredging. The construction configuration and details for this berth are unknown at this time due to the unknown extent of a Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) action that would have to occur prior to any pier construction. Flexible space for parking, equipment staging, emergency storage, and other similar or related uses would be distributed throughout the current Base boundaries as well as a portion of the newly acquired property at Terminal 46. Alternative 3 would include construction of several new facilities on Base.

No-Action Alternative. Under the No-Action Alternative, the Coast Guard would not implement land acquisition, facility modernization requirements, or infrastructure enhancements. Base Seattle would not be upgraded to make it a suitable location to homeport up to eight future major cutters. The No-Action Alternative would also eliminate the possibility of Coast Guard personnel relocating to Base Seattle from current facilities in downtown Seattle. Further, several buildings on Base could be forced to reduce capacity or risk losing functionality altogether if ongoing structural deterioration is not addressed. Delaying necessary demolition and construction projects would result in increased risks to the environment, the public, and the health and safety of Coast Guard personnel and visitors. Selecting the No-Action Alternative would significantly impair the Coast

Guard's ability to accomplish its operational mission requirements throughout the Pacific Northwest and Arctic operational areas from Base Seattle. The No-Action Alternative would also leave requirements unfulfilled. The Coast Guard would not be able to continually comply with its statutory mandated missions effectively and efficiently. This alternative was analyzed in the PEIS to comply with Council of Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 Code of Federal Regulations [CFR] § 1502.14[c]) and to provide a comparative baseline against which to evaluate impacts of the Proposed Action and alternatives.

Resource areas analyzed in the Final PEIS include land use and coastal zone management, geological resources, water resources, transportation, air quality, biological resources, socioeconomics and environmental justice, cultural resources, noise, utilities and public services, hazardous materials and wastes, visual resources, recreational resources, and greenhouse gases and climate change.

Based on the analysis presented in the Final PEIS, potentially significant direct or indirect adverse impacts could occur to land use, socioeconomics and environmental justice, and cultural resources. Adverse cumulative impacts could occur to geological resources, water resources, biological resources, cultural resources, hazardous materials and wastes, and visual resources. Impacts to all other resource areas would be less-than-significant or beneficial. Base facilities and infrastructure improvements represent a long-term development program that will require a multi-year capital investment strategy. Specific projects may require additional NEPA evaluation and compliance with other environmental laws and regulations when they are programmed for implementation.

Following a 30-day waiting period, after publication of the Environmental Protection Agency's NOA in the **Federal Register**, the Coast Guard will announce its Record of Decision, which will be published in the **Federal Register**.

Dated: November 5, 2024.

A. Grable,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Engineering and Logistics.

[FR Doc. 2024-26393 Filed 11-14-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002; Internal Agency Docket No. FEMA-B-2475]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 13, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2475, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/>

prelimdownload and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the

tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,
Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Hampshire County, West Virginia and Incorporated Areas Project: 21-03-0004S Preliminary Date: February 23, 2024	
Unincorporated Areas of Hampshire County	Hampshire County Courthouse, 19 East Main Street, Romney, WV 26757.
Town of Capon Bridge	Hampshire County Courthouse, 19 East Main Street, Romney, WV 26757.
Town of Romney	Town Hall, 340 East Main Street, Romney, WV 26757.

[FR Doc. 2024-26673 Filed 11-14-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Pipeline Operator Security Information

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0055, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. Specifically, the collection involves the collection of pipeline security incident data, and the cybersecurity coordinator(s) and alternate(s) contact information.

DATES: Send your comments by January 14, 2025.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0055; Pipeline Operator Security Information. In addition to TSA's broad responsibility and authority for "security in all modes of transportation . . . including security responsibilities . . . over modes of transportation [,]" see 49 U.S.C. 114, TSA is required to issue recommendations for pipeline security measures and conduct inspections to assess implementation of the recommendations. See sec. 1557 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53 (August 3, 2007). Consistent with these requirements,

TSA produced Pipeline Security Guidelines in December 2010 and 2011, with an update published in April 2021. These voluntary guidelines were developed with the assistance of industry and government members of the Pipeline Sector and Government Coordinating Councils, industry association representatives, and other interested parties.

Voluntary Collection. As the lead Federal agency for pipeline security and consistent with its statutory authorities, TSA needs to be notified of all (1) incidents that may indicate a deliberate attempt to disrupt pipeline operations and (2) activities that could be precursors to such an attempt. The Pipeline Security Guidelines encourage pipeline operators to notify the Transportation Security Operations Center via phone or email as soon as possible if incidents occur or if there is other reason to believe that a terrorist incident may be planned or may have occurred. When voluntarily contacting the Transportation Security Operations Center, the Guidelines request pipeline operators to provide as much information about the incident as possible.

Mandatory Collection. In May 2021, TSA issued a Security Directive (SD) series with requirements for owner/operators of hazardous liquid and natural gas pipelines and liquefied natural gas facilities that TSA designated as critical. The SD series included two mandatory information collections:

1. TSA requires all owner/operators subject to the SD's requirements to report actual or potential cybersecurity incidents affecting their information technology and operational technology systems to the Cybersecurity and Infrastructure Security Agency (CISA) within 24 hours of discovery, using the CISA Incident Reporting System.

2. The SD series requires critical pipeline owner/operators to appoint cybersecurity coordinator(s) or alternate(s) at the corporate level and to provide contact information for the coordinators to TSA. To ensure that information reported pursuant to the SD series is identifiable within the system, TSA requires these owners/operators to indicate that they are providing the information pursuant to the SD series.

TSA expects voluntary reporting of pipeline security incidents will occur on an irregular basis. TSA estimates that pipeline owner/operators will report approximately 118 incidents annually, requiring an average of 30 minutes (0.50 hour) to collect, review, and submit event information. The total potential burden to the public for this task is estimated to be 59 hours.

Using the CISA Incident Reporting System, TSA expects the mandatory reporting of pipeline cybersecurity incidents to CISA will occur 20 times per year for each covered pipeline owner/operator. TSA estimates that 100 pipeline owner/operators will take approximately 2 hours to gather the appropriate information to submit each incident report. The potential burden to the public for this task is $20 \times 100 \times 2$ hours = 4,000 hours.

TSA estimates that approximately 100 pipeline owner/operators will report their cybersecurity manager and alternate point of contact information. It will take the pipeline owner/operator approximately 30 minutes (0.50 hour) to do so, and the potential burden for this task is 100×0.50 hour = 50 hours.

Therefore, the total hour burden to the public for this information collection request is estimated to be 59 hours (Security Incidents) + 4,000 hours (CISA Reporting) + 50 hours (Cyber POC) = 4,109 hours annually.

Dated: November 8, 2024.

Christina A. Walsh,
TSA Paperwork Reduction Act Officer,
Information Technology.

[FR Doc. 2024-26538 Filed 11-14-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R7-NWRS-2023-0072;
FF07R00000-245-FXRS12610700000]

Notice of Availability; Draft Supplemental Environmental Impact Statement for a Potential Land Exchange Involving Izembek National Wildlife Refuge Lands; Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Alaska National Interest Lands Conservation Act of 1980, as amended, along with other laws as applicable, we, the U.S. Fish and Wildlife Service (FWS), announce the availability of a draft supplemental environmental impact statement (draft supplemental EIS) to consider the effects of a potential land exchange of certain lands owned by the King Cove Corporation with certain lands owned by the U.S. Government and located within the Izembek National Wildlife Refuge and Izembek Wilderness Area. If a land exchange is approved, King Cove Corporation would use the acquired land for a road corridor for noncommercial use. We invite comment on the draft supplemental EIS from the public and local, State, Tribal, and Federal agencies. We will separately be announcing public meetings.

DATES:

Submitting Comments: We must receive your written comments on or before December 30, 2024. Comments submitted online at <https://www.regulations.gov/> must be received by 11:59 p.m. eastern time on December 30, 2024.

Public Meetings: Meeting locations, dates, and times will be announced at <https://www.fws.gov/project/potential-land-exchange-road-between-king-cove-and-cold-bay>.

ADDRESSES:

Obtaining Documents: The draft supplemental EIS, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R7-NWRS-2023-0072 at <https://www.regulations.gov>. In addition, to inform public comment, we are also making FWS's 2013 EIS and record of decision (ROD) documents available for review at <https://www.regulations.gov> in Docket No. FWS-R7-NWRS-2023-0072. However, we are not taking public comments on those documents at this time.

Submitting Public Comments: You may submit comments by any of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R7-NWRS-2023-0072.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS-R7-NWRS-2023-0072; U.S. Fish and Wildlife Service, MS: PRB/3W; 5275

Leesburg Pike; Falls Church, VA 22041-3803.

• *Public Meetings and any Subsistence Hearings:* Comments will also be accepted at the in-person and virtual public meetings/hearings. Meeting locations, dates, and times will be announced at <https://www.fws.gov/project/potential-land-exchange-road-between-king-cove-and-cold-bay>.

We will post all written comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Public Review Process for more information).

Reasonable Accommodations for Meetings: Persons needing reasonable accommodations to attend and participate in the public meetings should contact Bobbie Jo Skibo as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please make contact no later than 1 week before the desired public meeting. Information and documents are available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT:

Bobbie Jo Skibo, Project Leader, by telephone at 907-441-1539; by email at bobbiejo_skibo@fws.gov; or by U.S. mail at U.S. Fish and Wildlife Service, Alaska Region, National Wildlife Refuge System, 1011 East Tudor Road, Anchorage, AK 99503. Contact Bobbie Jo Skibo to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and the Alaska National Interest Lands Conservation Act of 1980, as amended (ANILCA; Pub. L. 96-487, sec. 1302(h), Dec. 2, 1980; 16 U.S.C. 3192(h)), along with other laws as applicable, we, the U.S. Fish and Wildlife Service (FWS), announce the availability of a draft supplemental environmental impact statement (draft supplemental EIS) to consider the effects of a potential land exchange of certain lands owned by the King Cove Corporation with certain lands that are owned by the U.S. Government and

located within the Izembek National Wildlife Refuge and Izembek Wilderness Area. If a land exchange is approved, King Cove would use the acquired land for a road corridor for noncommercial health, safety, and subsistence uses. The draft supplemental EIS updates information used in FWS's 2013 analysis on the impacts of a then-proposed land exchange and proposed road corridor and the viability of alternatives to provide safe and reliable transportation between the City of King Cove, Alaska, and the airport at Cold Bay, Alaska, and also includes a new land exchange and road corridor alternative. We invite comments on the draft supplemental EIS from the public and local, State, Tribal, and Federal agencies.

Potentially Affected Land Areas

The Izembek National Wildlife Refuge (417,533 acres (ac)) and the North Creek (8,452 ac) and Pavlof (1,447,264 ac) units of the Alaska Peninsula National Wildlife Refuge are located at the westernmost tip of the Alaska Peninsula. To the north of the Izembek Refuge is the Bering Sea; to the south is the Pacific Ocean. The Izembek Wilderness covers much of the Izembek National Wildlife Refuge and includes pristine streams, extensive wetlands, steep mountains, tundra, and sand dunes, and provides high scenic, wildlife, and scientific values, as well as opportunities for solitude and recreation. The Izembek National Wildlife Refuge includes the traditional homelands of the Unangaꝯ people.

The King Cove Corporation is an Alaska Native Village Corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*). Under the authority of ANCSA, Congress granted to King Cove Corporation land entitlements within and adjacent to Izembek Refuge.

Previous Actions

In the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11, title VI, subtitle E (herein referred to as the 2009 Act)), Congress directed FWS to prepare an EIS under NEPA and its implementing regulations (40 CFR parts 1500–1508) to evaluate the impacts of a proposed land exchange with the State of Alaska and the King Cove Corporation for the purpose of constructing a single-lane gravel road between the communities of King Cove and Cold Bay, Alaska. The 2009 Act required that the road “shall be used primarily for health and safety purposes (including access to and from the Cold Bay Airport) and only for

noncommercial purposes,” with limited exceptions. The land exchange contemplated by the 2009 Act would have involved the conveyance of approximately 206 ac within the Izembek Wilderness portion of Izembek National Wildlife Refuge for the road corridor and approximately 1,600 ac of Federal land within the Alaska Maritime National Wildlife Refuge on Sitkinak Island. In exchange, FWS would have received approximately 43,093 ac of land owned by the State of Alaska and approximately 13,300 ac of land owned by the King Cove Corporation. These lands are located around Cold Bay and are adjacent to the North Creek Unit of the Alaska Peninsula National Wildlife Refuge.

In accordance with section 6402(b)(2)(B) of the 2009 Act, an EIS completed in 2013 (2013 EIS; February 6, 2013, 78 FR 8577) analyzed the proposed land exchange and the potential construction and operation of a road between the communities of King Cove and Cold Bay, Alaska, and, among other alternatives, evaluated a specific road corridor through the Izembek Refuge that was identified in consultation with the State of Alaska, the City of King Cove, and the Agdaagux Tribe of King Cove. In accordance with the 2009 Act, subsequent to the preparation of the 2013 EIS and in conjunction with the 2013 record of decision (2013 ROD; February 20, 2014, 79 FR 9759), Secretary of the Interior Sally Jewell decided not to enter a land exchange after determining that the proposed land exchange (including the construction of the proposed road) was not in the public interest.

On July 3, 2019, Secretary of the Interior David Bernhardt signed a memorandum titled “Findings and Conclusions Concerning a Proposed Land Exchange Between the Secretary of the Interior and King Cove Corporation for Lands Within Izembek National Wildlife Refuge, Alaska” (2019 Secretarial Memorandum). That memorandum laid the foundation for the concurrent approval of a land exchange agreement (2019 Exchange Agreement) between the Department of the Interior (Department) and King Cove Corporation. The 2019 Secretarial Memorandum stated that the purpose of the 2019 Exchange Agreement was to allow a road across the Izembek National Wildlife Refuge to improve access by the residents of King Cove to the airport at Cold Bay. Since the authorities under the 2009 Act had expired, the 2019 Exchange Agreement relied on the general exchange authority found at in section 1302(h) of ANILCA. However, the 2019 Exchange Agreement

relied in large part on the record developed for the exchange analyzed under the 2013 EIS and rejected by Secretary Jewell in the 2013 ROD.

On June 1, 2020, the District Court for the District of Alaska vacated the 2019 Exchange Agreement based on several legal defects in the decision. On appeal to the Ninth Circuit Court of Appeals, a three-judge appellate panel reversed the district court. However, an en banc panel of the Ninth Circuit then vacated the three-judge panel's decision and agreed to a new review. On March 14, 2023, Secretary of the Interior Deb Haaland issued a new decision memorandum withdrawing the Department from the 2019 Exchange Agreement. That decision memorandum identified as a procedural flaw the failure to consider the effects of the exchange on subsistence uses, and highlighted shortcomings in the record regarding NEPA and ESA analyses. In addition, the Secretary expressed significant policy concerns regarding the nonpublic manner in which the 2019 Exchange Agreement was accomplished, as well as the terms of the Exchange Agreement, which differed from the exchange evaluated in the 2013 EIS. In June 2023, the Ninth Circuit dismissed the lawsuit because the issue had become moot due to Secretary Haaland's decision memorandum.

Notice of Intent

On May 18, 2023 (88 FR 31813), we published a **Federal Register** notice of intent to prepare a supplemental EIS to consider the effects of a potential land exchange. In that notice, we requested information and suggestions on the proposed supplemental EIS. In particular, we sought information to assist us in updating information we used in our 2013 analysis on the impacts of the then-proposed exchange and road corridor and the viability of alternatives to provide safe and reliable transportation between the City of King Cove, Alaska, and the airport at Cold Bay, Alaska. Comments we received are at <https://www.regulations.gov> in Docket No. FWS–R7–NWRS–2023–0072. The final scoping report, which summarizes comments, is attached as an appendix to the draft SEIS.

Current Action

While the authorities in the 2009 Act remain expired, the FWS has prepared a draft supplemental EIS to address a potential exchange under section 1302(h) of ANILCA. The FWS's draft supplemental EIS analysis assesses the potential impacts of a land exchange and road construction and use, allows

for public participation, and integrates the NEPA analysis with an evaluation under ANILCA section 810. The FWS is also using and coordinating the NEPA process to help inform the Department's processes and analysis under section 106 of the National Historic Preservation Act (54 U.S.C. 306108), the ESA, ANILCA (including any land exchange's furtherance of the statute's conservation and subsistence purposes), ANCSA, the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), and the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). Alternatives reviewed include the 2013 EIS alternatives and an additional new alternative for the terms of the proposed land exchange involving the same road corridor in the 2019 Exchange Agreement but involving different terms.

Public Review Process

Request for Public Comments

You may submit written comments and materials concerning the draft supplemental EIS by one of the methods listed in **ADDRESSES**.

Public Availability of Comments

If you submit a comment via <https://www.regulations.gov>, your entire comment, including any personal identifying information such as your address, phone number, and email address, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <https://www.regulations.gov>.

Tribal Consultation and Comment

The meaningful input of Alaska Native Tribes and Alaska Native Corporations is of critical importance to the supplemental EIS. Therefore, and as expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretary are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and federally recognized Tribes. Consultation with Alaska Native Corporations is based on Public Law 108–199, div. H, sec. 161, January 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, sec. 518, December 8, 2004, 118 Stat. 3267, which provides that:

"The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175." FWS will hold individual consultation meetings upon request. The Secretary of the Interior will consider Alaska Native Tribes' and Alaska Native Corporations' information, input, and recommendations, and address their concerns as much as practicable.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–26563 Filed 11–14–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX25EE000101100]

Public Meeting of the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that a Federal Advisory Committee meeting of the National Geospatial Advisory Committee (NGAC) will take place and is open to members of the public.

DATES: The following meetings will be held as a webinar:

- Wednesday, December 4, 2024 from 1 p.m.–5 p.m. eastern standard time;
- Wednesday, February 19, 2025 from 1 p.m.–5 p.m.; and Thursday, February 20, 2025 from 1 p.m.–5 p.m. eastern standard time.

The following meeting will be held in person:

- Wednesday, June 11, 2025 from 9 a.m. to 5 p.m.; and on Thursday, June 12, 2025 from 9 a.m. to 4 p.m. eastern daylight time.

ADDRESSES: The December 2024 and February 2025 meetings will be held online and via teleconference. The June 2025 meeting will be held in the South Penthouse Conference Room of the Department of the Interior Building, 1849 C Street NW, Washington, DC. Members of the public may attend the meeting in person or can attend via webinar. Registration instructions for both the online and in person meetings will be posted at www.fgdc.gov/ngac.

FOR FURTHER INFORMATION CONTACT: Mr. Josh Delmonico, Federal Geographic Data Committee (FGDC), USGS, by mail at 12201 Sunrise Valley Drive, MS 590, Reston, VA 20192; by email at jdelmonico@usgs.gov; or by telephone at (703) 648–5752. Comments can be sent by email to gs-faca@usgs.gov.

Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR part 102–3.

Purpose of the Meeting: The NGAC provides advice and recommendations to the FGDC related to management of federal and national geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of the Geospatial Data Act (GDA) of 2018 and the Office of Management and Budget Circular A–16. The NGAC reviews and comments on geospatial policy and management issues and provides a forum to convey views representative of non-federal stakeholders in the geospatial community. The NGAC is one of the primary ways that the FGDC collaborates with its broad network of partners. Additional information about the NGAC is available at: www.fgdc.gov/ngac.

Agenda Topics:

- FGDC Update
- Landsat Advisory Group
- 3D Elevation Program
- GDA
- NSDI
- GeoPlatform
- Standards and Data Access
- Public Comment

Meeting Accessibility/Special

Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis. Seating for in person attendees may be

limited due to room capacity. Webinar/conference line instructions will be provided to registered attendees prior to the meeting.

Public Disclosure of Comments: There will be an opportunity for public comment during each day of the meeting. Depending on the number of people who wish to speak and the time available, the time for individual comments may be limited. Written comments may also be sent to the NGAC for consideration. To allow for full consideration of information by NGAC members, written comments must be provided to Josh Delmonico (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. Any written comments received will be provided to NGAC members before the meeting.

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2024–26651 Filed 11–14–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_WY_FRN_MO4500182754]

Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement for the Newcastle Field Office, Wyoming, and Nebraska Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLMPA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Newcastle Field Office and Nebraska Resource Management Plans (Newcastle and Nebraska RMPs) and by this notice is announcing the opening of the comment period on the Draft RMP/EIS

and the BLM's proposed areas of critical environmental concern (ACECs).

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP/EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Draft RMP/EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMP/Final EIS, please ensure that the BLM receives your comments prior to the close of the 90-day public comment period or 15 days after the last public meeting, whichever is later.

In addition, this notice also announces the opening of a 90-day comment period for ACECs. The BLM must receive your ACEC-related comments by February 13, 2025.

The BLM will be holding multiple public meetings during the public comment period and the dates, times, and locations of these public meetings will be announced through public notices, news releases, social media, and mailings at least 15 days prior to the meetings.

ADDRESSES: The Draft RMP/EIS is available for review on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2013064/510>.

Written comments related to the Newcastle and Nebraska RMPs may be submitted by any of the following methods:

- **Website:** <https://eplanning.blm.gov/eplanning-ui/project/2013064/510>.
- **Email:** BLM_WY_Newcastle_Nebraska_RMP@blm.gov.
- **Mail:** BLM, High Plains District Office, 2987 Prospector Drive, Casper, WY 82604, OR BLM, Newcastle Field Office, 1101 Washington Boulevard, WY 82701.

Documents pertinent to this proposal may be examined online at blm.gov/eplanning-ui/project/2013064/510 and at the Newcastle Field Office.

FOR FURTHER INFORMATION CONTACT:

Kathleen T. Lacko, Project Manager, telephone (307) 261–7536; address BLM High Plains District Office, 2987 Prospector Drive, Casper, WY 82604; email blm_wy_newcastle_nebraska_rmp@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. Lacko. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Wyoming State Director has prepared a Draft RMP/EIS and announces the comment period on the Draft RMP/EIS and the BLM's proposed ACECs. The planning area includes Crook, Weston, and Niobrara Counties in Wyoming and all counties in Nebraska, and encompasses approximately 287,900 acres of surface public lands and 1,738,900 acres of Federal mineral estate in Wyoming, and approximately 5,100 acres of surface public lands and 223,900 acres of Federal mineral estate in Nebraska. In addition to BLM-managed surface lands, the planning area includes the mineral estate beneath the following:

Newcastle Field Office, Wyoming: One National Monument, administered by the National Park Service; one National Forest and one National Grassland administered by the US Forest Service; one State Park, administered by Wyoming State Parks and Cultural Resources; and historic and indigenous trails.

Nebraska: Seven National Wildlife Refuges administered by the U.S. Fish and Wildlife Service; five National Historic Trails, two National Monuments, one National Recreational River, and one National Scenic River administered by the National Park Service; two designated wilderness areas and two proposed wilderness areas; three Indian Reservations and three American Indian Trust Lands; two National Forests and three National Grasslands administered by US Forest Service; and seventy-three State Parks, State Historic Parks, or State Recreation Areas administered by the Nebraska Game and Parks Commission.

Purpose and Need for the Planning Effort

The purpose of the Newcastle and Nebraska RMPs/EIS is to provide a comprehensive framework to guide management of BLM-administered surface land in the planning area. The RMPs/EIS will incorporate new data, address land use issues and conflicts, and specify where and under what circumstances activities will be allowed on BLM-administered surface lands. The objectives, land use allocations, and management decisions will be based on the principals of multiple use and sustained yield, except where a tract of such public land has been dedicated to specific uses according to another provision of law. All management direction must meet the objectives of the BLM's multiple use management

mandate and responsibilities under FLPMA Section 202(c) and (e) and is subject to valid existing rights. These include all valid leases, permits, patents, rights-of-way (ROWs), or other land use rights or authorizations in place at the time the RMP decision is approved.

The Newcastle Field Office (NFO) has determined the need to update the two RMPs it relies on to manage the public land and Federal mineral estate in the planning areas. Assessments of these plans showed they require updating to address new information and changes to resources and resource uses within the planning area since the BLM completed the NFO RMP/EIS in 2000 and the Nebraska RMP in 1992. The revised RMPs will replace the existing Newcastle RMP/Record of Decision (ROD) and Nebraska RMP/ROD.

Alternatives Including the Preferred Alternative

The BLM has analyzed four alternatives in detail, including the no action alternative.

Alternative A—No Action Alternative

- Continue existing management under Newcastle (2000) and Nebraska (1992) RMPs
- Approximately 286,500 acres are identified as available for disposal (Newcastle)

Alternative B—Emphasize Resource Protection

- Conservation emphasis
- Emphasis on ACEC designations (Newcastle: 1 existing with expansion, 1 BLM proposed)
- Approximately 3,300 acres are identified as available for disposal (Newcastle)
- Most protected areas and use restrictions

Alternative C—Maximize Resource Use

- Resource use emphasis
- Fewest protected areas and restrictions to resource uses
- One ACEC brought forward from existing management without expansion (Same as Alternative A)
- Approximately 30,300 acres are identified as available for disposal (Newcastle)

Alternative D—Balance Resource Protection and Use (Preferred Alternative)

- Balance of conservation and resource use
- Two ACECs in Special Designations (Newcastle: refined boundary of proposed ACEC)
- One proposed Backcountry Conservation Area (Newcastle)

- Approximately 9,700 acres are identified as available for disposal (Newcastle)
- Multiple use focus with prescriptive actions to allow protections with more flexibility

The State Director has identified Alternative D as the preferred alternative, as it best meets the State Director's planning guidance and the purpose and need. This alternative balances components (objectives and management directions) of the other alternatives considered (Alternatives A, B, and C) and allows for multiple use with a variety of prescriptive actions to allow protections with flexibility.

Mitigation

Appendix C in Volume 2 of the Draft EIS is the Wyoming BLM Mitigation Guidelines for Surface Disturbing and Disruptive Activities. Mitigation in Nebraska will be in accordance with BLM policy.

ACECs

Consistent with land use planning regulations at 43 CFR 1610.7–2(b), the BLM is announcing the opening of a 90-day comment period on the ACECs proposed for designation in the preferred alternative. Comments may be submitted using any of the methods listed in the **ADDRESSES** section earlier.

The proposed ACECs included in the preferred alternative for the Newcastle RMP are:

- Whoopup Canyon ACEC is an existing ACEC that has approximately 1,400 acres and contains rock art ranging from 2,400–11,500 years old. The preferred alternative would expand the current ACEC by approximately 200 acres, making it a total of approximately 1,600 acres.

- The Little Missouri Antelope Trap ACEC is a Native American antelope trap complex containing trap structures and drive lines, occupation sites, and ceremonial significance, located in Crook County. Proposed for its rare and sensitive cultural resources, the boundary of the Little Missouri Antelope Trap ACEC in Alternative B (9,500 acres) encompasses adjacent non-contributing cultural sites and includes an expanded boundary that would provide increased protection of the cultural setting of the trap site. In Alternative D, the Preferred Alternative, the ACEC would cover approximately 5,300 acres, with the boundary of the ACEC refined based on information received from Tribal field visits, academic studies, and public and cooperating agency input. This information indicated the importance of not only the physical trap features, but

also the landscape, setting, and ceremonial features directly contributing to the significance of the Little Missouri Antelope Trap.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMP. The Proposed RMP/Final EIS is anticipated to be available for public protest July 2025 with an Approved RMP and ROD October 2025.

The BLM will be holding five public meetings in the following locations: in-person meetings will be held in Sundance, Newcastle, and Lusk, Wyoming, and Scottsbluff, Nebraska, and one meeting will be held virtually. The specific date(s) and location(s) of these meetings will be announced at least 15 days in advance through local media, newspapers, and the ePlanning project page: <https://eplanning.blm.gov/eplanning-ui/project/2013064/510>.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Government-to-government meetings will continue, and field visits are planned for interested Tribes.

During public review of this Draft RMPs/EIS, the BLM is seeking constructive input regarding the proposals for managing resources and resource uses.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.7–2)

Andrew S. Archuleta,
State Director.

[FR Doc. 2024–26665 Filed 11–14–24; 8:45 am]

BILLING CODE 4331–26–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_HQ_FRN_MO4500183156]****Notice of Availability of the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan Amendment (RMPA) and Final Environmental Impact Statement (EIS) for the Greater Sage-Grouse Rangewide Planning and by this notice is announcing the start of a 30-day protest period of the Proposed RMPA to the BLM Director.

DATES: This notice announces the beginning of a 30-day protest period to the BLM on the Proposed RMPA. Protests must be postmarked or electronically submitted on the BLM's ePlanning site within 30 days of the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The Proposed RMPA, Final EIS, and associated documents are available on the BLM ePlanning project website at: <https://eplanning.blm.gov/eplanning-ui/project/2016719/510>. Documents pertinent to this proposal may also be examined at the BLM State Offices in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Wyoming.

Instructions for filing a protest with the BLM for the Greater Sage-Grouse Rangewide Planning can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: Pat Deibert, BLM National Sage-Grouse Conservation Coordinator; telephone: 720–447–8107; address: 5353 Yellowstone Road, Cheyenne, WY 82009; email: BLM_HQ_GRSG_Planning@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 Dr. Deibert. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The RMPA would change goals, objectives, and management from previous planning efforts in 77 land use plans to enhance Greater sage-grouse (GRSG) conservation through management of sagebrush habitats on BLM-administered lands. The planning area includes portions of 10 Western states with GRSG habitat: California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming, and encompasses nearly 121 million acres of BLM-administered public lands. Because this effort is focused on GRSG habitat management, decisions resulting from this amendment effort could affect up to 69 million acres of BLM-administered lands associated with the applicable GRSG habitat management areas. No decisions are being made on National Forest System lands or the underlying Federal mineral estate as part of this process.

This RMPA builds on existing RMP direction related to GRSG conservation that was established in earlier planning efforts. The 2015 GRSG RMPA amended or revised RMPs in the planning area to provide for GRSG conservation on public lands. In the 2019 GRSG RMPAs, the BLM amended some of the 2015 GRSG plan decisions in the states of California, Colorado, Idaho, Nevada, Oregon, Utah, and Wyoming. On October 16, 2019, the United States District Court for the District of Idaho preliminarily enjoined the BLM from implementing the 2019 GRSG RMPAs (Case No. 1:16–CV–83–BLW).

The BLM's purpose and need is to amend certain 2015 and 2019 GRSG RMPA goals, objectives, allocations, and management actions in order to respond to updated scientific information and changing land uses and provide for consistent and effective rangewide conservation based on biological information that is responsive to locally relevant habitat variability. These were selected based on an internal review of the effectiveness of 2015 and 2019 RMPA decisions and the degree to which those decisions sufficiently and appropriately addressed existing threats to GRSG habitats and continued population declines, while balancing the BLM's ability to manage public lands for other uses, and were additionally informed by updated

scientific findings and feedback received from Tribal, Federal, state, and local agencies and the public. All goals, objectives, or decisions from the 2015 or 2019 RMPAs that are not being considered for amendment would remain in place.

In preparing the Proposed RMPA, the BLM analyzed six alternatives in detail, including the No Action Alternative. Alternative 1 includes the applicable elements (goals, objectives, and management direction) of the 2015 GRSG amendment efforts. Alternative 2, the No Action Alternative, includes the applicable RMP elements from the 2019 GRSG amendment effort. Alternative 3 emphasizes GRSG conservation and protection and has the highest amount of preservation measures of the alternatives and includes the identification of Areas of Critical Environmental Concern (ACECs). Alternative 4 emphasizes conservation while providing more allowances for public land uses than Alternative 3 and adjusts GRSG habitat management areas based on new information and science available since the previous planning efforts. Alternative 5, identified as the Preferred Alternative in the Draft RMPA and EIS, balances conservation with increased levels of site-specific allowances for public land uses and aligns habitat management areas with new information and science. Alternative 6 applies all the same habitat management areas and associated management as Alternative 5 but includes the identification of ACECs.

Public review of the Draft RMPA and EIS began on March 15, 2024, and ended on June 13, 2024. During the 90-day comment period, the BLM held 13 public meetings, including two virtual meetings and 11 in-person meetings throughout the planning area. Over 38,000 submissions were received, including about 6,000 individual comments. Major comment themes included management direction for renewable energy, lands and realty actions, fluid minerals, livestock grazing and predation, and the RMPA processes for mitigation, disturbance caps, and adaptive management. Comments received on the Draft RMPA and EIS were considered and addressed in the Proposed RMPA and Final EIS. In response to public and cooperating comments and internal review of the alternatives and effects described in the Draft EIS, the BLM developed the Proposed RMPA. The Proposed RMPA increases protections for GRSG from the Preferred Alternative while maintaining an appropriate balance of public land uses. The Proposed RMPA incorporates

management direction approaches from all of the alternatives analyzed in the Draft RMPA and EIS. Specifically, priority habitat management areas (PHMA) are identified as exclusion for solar and wind energy. PHMA remains an avoidance area for major rights-of-way, but there are fewer allowable exceptions for development. A subset of PHMA requiring additional protections has been identified as PHMA with Limited Exceptions, which would be managed as exclusion areas for major rights-of-way, with no exceptions to the solar and wind exclusion allocation or to the no surface occupancy allocation for fluid minerals. These additional protections will provide the necessary protections for GRSG habitat given anticipated development threats and negative impacts from climate change while also ensuring an appropriate balance of public land uses.

Protest of the Proposed RMP Amendment

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest which will or might be adversely affected by approval of the Proposed RMPA may protest its approval to the BLM. Protest on the Proposed RMPA constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMPA. Instructions for filing a protest with the BLM regarding the Proposed RMPA may be found online (see **ADDRESSES**). All protests must be in writing and mailed to the appropriate address found on the protest web page or submitted electronically through the BLM ePlanning project website (see **ADDRESSES**). Protests submitted electronically by any means other than the ePlanning project website will be invalid unless a hard copy of the protest is also submitted. The BLM will render a written decision on each protest. The protest decision of the BLM shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue seven state-specific Records of Decision and Approved RMPAs.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal

identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10 (2023), 43 CFR 1610.2; 43 CFR 1610.5)

Sharif Branham,

Assistant Director for Resources and Planning.

[FR Doc. 2024–26483 Filed 11–14–24; 8:45 am]

BILLING CODE 4331–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500182346]

Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for the Purple Sage Energy Center Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for the Purple Sage Energy Center Project (Project) and by this notice is providing information announcing the opening of the comment period on the Draft RMP Amendment/EIS. The Purple Sage Energy Project was formerly known as the Golden Currant Solar Project.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP Amendment/EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments on the Draft RMP Amendment/EIS, please ensure your comments are received prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

The BLM will be holding one in-person public meeting and one virtual public meeting during the public comment period.

- **In-Person Meeting**
—*Date and Time:* January 14, 2025, 6 p.m. to 8 p.m. Pacific Standard Time (PST)
—*Location:* Pahrump Nugget Hotel and Casino, 681 NV Highway 160, Pahrump, Nevada 89048
- **Virtual Meeting**
—*Date and Time:* January 16, 2025, 6 p.m. to 8 p.m. PST
—*Registration information:* <https://eplanning.blm.gov/eplanning-ui/project/2021533/510>.

Details on public meetings and pertinent documents will be provided on the National NEPA Register project website: <https://eplanning.blm.gov/eplanning-ui/project/2021533/510>.

ADDRESSES: The Draft RMP Amendment/EIS is available for review on the BLM National NEPA Register project website at <https://eplanning.blm.gov/eplanning-ui/project/2021533/510>. Additionally, a copy of the Draft RMP Amendment/EIS is physically available at the following locations:

- BLM Southern Nevada District Office, Las Vegas Field Office, 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130
- Pahrump Community Library, 701 East Street, Pahrump, Nevada 89408
- Tecopa Branch Library, 408 Tecopa Hot Springs Road, Tecopa, California 92389

Written comments related to the Draft RMP Amendment/EIS for the Purple Sage Energy Center Project may be submitted by any of the following methods:

- *Website:* <https://eplanning.blm.gov/eplanning-ui/project/2021533/510>.
- *Email:* BLM_NV_SND_EnergyProjects@blm.gov.
- *Mail:* BLM Las Vegas Field Office, Attn: Purple Sage Energy Center Project, 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT:

Jessica Headen, Project Manager, telephone (702) 515–5206; address 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130; email BLM_NV_SND_EnergyProjects@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 Jessica Headen. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM has prepared a Draft RMP Amendment/

EIS and provides information announcing the opening of the comment period on the Draft RMP Amendment/EIS. The Draft RMP Amendment is being considered to allow the BLM to evaluate the effects of modifying two existing, undeveloped utility corridors that intersect the Project site. This change would require amending the existing 1998 Las Vegas RMP.

The planning area in Clark and Nye counties, Nevada, encompasses approximately 9,890,365 acres within the Southern Nevada District area.

A BLM designated energy corridor, Segment #224–225, North Pahrump/U.S. 95 to Las Vegas/Ivanpah Valley (a Section 368 energy corridor), along the Clark County/Nye County border intersects a portion of the Project site. A locally designated utility corridor, established in the 1998 Las Vegas RMP (the RMP-designed utility corridor), intersects a portion of the Project site. An amendment to the 1998 Las Vegas RMP is being considered to modify these two existing undeveloped corridors to avoid the Project site.

The BLM is utilizing the NEPA substitution process to comply with the requirements of Section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, consistent with 36 CFR 800.8(c). The BLM, as lead Federal agency, has incorporated information and the steps of the Section 106 process into the Draft EIS, and publication of the Draft EIS will allow the consulting parties and the public an opportunity to review and comment on the process as provided in 36 CFR 800.8(c)(2).

Purpose and Need

The need for the BLM's action (processing the Applicant's application) is to respond to the Noble Solar, LLC's (Applicant) request for a right-of-way (ROW) authorization to construct, operate, maintain, and decommission a proposed solar facility, associated battery storage, and an interconnection to the regional transmission system (Project), in accordance with the BLM's responsibility under title V of FLPMA and 43 CFR part 2800. The Project would sit on approximately 4,456 acres of BLM-managed public land located in the Pahrump Valley in Clark County designated as a solar variance area. The site is approximately five miles southeast of Pahrump, 26 miles west of Las Vegas, and less than two miles southwest of State Route 160. The BLM's action of considering the ROW application also meets the BLM's obligation to contribute towards the legislative and administrative goals of advancing the development of renewable energy production on Federal

public lands as directed by section 3104 of the Energy Act of 2020 and Executive Order 14057.

The Project as proposed would not conform to the 1998 Las Vegas RMP as required by 43 CFR 1610.5–3(a). The BLM would need to amend the 1998 Las Vegas RMP to bring the Project into compliance. In particular, the Applicant's proposed Project does not conform with the management objectives for the two undeveloped utility corridors that intersect the Project site.

The purpose of the BLM's action is to determine if the Applicant's Project and alternatives are consistent with relevant laws, regulations, and policies, and to consider whether to grant, grant with modifications, or deny the ROW. The purpose of the Draft RMP Amendment is to ensure that any development of renewable energy production in the general vicinity of the Applicant's proposed Project site conforms with the RMP's provisions, as provided for in 43 CFR 1610.5–3(c), specifically by modifying the location of the utility corridors to avoid the Project site.

The Draft RMP Amendment/EIS addresses the direct, indirect, and cumulative environmental impacts of the Proposed Action and alternatives. Alternatives to the Proposed Action were developed by the BLM to avoid or reduce various resource conflicts. Key resource constraints include habitat for and presence of Mojave desert tortoise, which is listed as threatened under the Endangered Species Act; over allocated groundwater resources; paleontological resources; Pahrump Valley buckwheat; native desert vegetation at the Project site; recreation use in the surrounding area; proximity to local communities; and generation of dust.

Alternatives Including the Preferred Alternative

The BLM has analyzed three alternatives in detail, including the No Action Alternative. These are the Applicant Proposed Action, Alternative Action 1 (BLM preferred alternative), and the No Action Alternative.

Alternative Action 1, the BLM preferred alternative that is also referred to as the Resources Integration Alternative, was identified in response to issues raised by the public and agency considerations. The intent of Alternative 1 is to minimize long-term disturbance to vegetation and soils within the solar facility by setting restoration standards to ensure that long-term disturbance to vegetation is minimized. The established disturbance threshold for intensive disturbance construction methods, such as grading,

disc and roll, and spot grading, under the Resources Integration Alternative is 20 percent of the development areas. Given the demonstrated limitations with equipment tolerances and the steep slopes of the development areas of the Project site, it may be necessary to utilize intensive disturbance construction methods for up to 35 percent of the development area for development of the project. Intensive disturbance methods within the development areas that are not for permanent facilities, such as roads, inverters, substations, or battery energy storage systems, that exceed the 20 percent threshold established for the Resources Integration Alternative would be subject to additional restoration requirements. Restoration would be implemented in accordance with and to meet the 60 percent native vegetation density standards required for the non-graded areas in the panel array blocks.

The No Action Alternative would be a continuation of existing conditions and the ROW would not be approved.

The BLM further considered a number of additional alternatives but dismissed these alternatives from detailed analysis as explained in the Draft RMP Amendment/EIS and Alternatives Report.

The BLM has identified Alternative Action 1—Resources Integration Alternative as the preferred alternative. Alternative Action 1 was found to best meet the BLM's planning guidance and is designed to be a Project lifecycle alternative as the alternative addresses not only construction, but also operations, maintenance, and decommissioning of the solar facility.

Mitigation

The BLM included seventeen mitigation measures including, but not limited to, the following measures to address key resources:

- Air emissions reduction measures (MM AIR–1)
- Reduced project footprint (MM WILD–1)
- Desert tortoise burrows (MM WILD–2)
- Pre-construction western monarch butterfly surveys (MM WILD–3)
- Pahrump Valley Buckwheat protection and topsoil salvage (MM VG–1)
- Invasive species management (MM VG–2)
- Timing of vegetation maintenance (MM VG–3)
- Tribal participation plan (MM NAC–1)
- Aviation glare notification (MM VR–1)
- Insulating gases (MM CC–1)

- Components of traffic and transportation plan (MM TRA–1)
- SR 160 and Tecopa Road intersection improvements (MM TRA–2)
- Cultural resource avoidance and monitoring (MM CR–1)
- Discovery of human remains (MM CR–2)
- Coordination with transmission line ROW holders/applicants (MM LU–1)
- Requirements for the paleontological resources monitoring and mitigation plan (MM PR–1)
- Groundwater pumping meter and development of a groundwater monitoring and reporting plan (MM WR–1).

These mitigation measures, along with Project Design Features required by the Southern Nevada District Office, Solar PEIS, management plans, and interagency operating procedures, are provided in full in Appendix B of the Draft RMP Amendment/EIS.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a concurrent 60-day Governor's consistency review on the Proposed RMP Amendment. The Proposed RMP Amendment/Final EIS is anticipated to be available for public protest by early summer 2025, and if the Project is authorized, the approved RMP Amendment and Record of Decision would be available by late summer 2025.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780 and other Departmental policies. Tribal concerns will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.9, 40 CFR 1506.10, 43 CFR 1610.2 and 43 CFR part 2800)

Kimberly Prill,

Acting State Director.

[FR Doc. 2024–26598 Filed 11–14–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AZ_FRN_MO4500182789 AZA–37939]

Notice of Availability of the Final Environmental Impact Statement for the Jove Solar Project, La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (EIS) for the Jove Solar Project.

DATES: The BLM will not issue a decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The Final EIS and documents pertinent to this proposal are available for review on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2017881/510>.

FOR FURTHER INFORMATION CONTACT:

Derek Eysenbach, Project Manager, at deysenbach@blm.gov, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004, or by phone at (602) 417–9505. 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 Mr. Eysenbach. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Purpose and Need

Jove Solar, LLC (Applicant) is seeking a 30-year right-of-way (ROW) to use 3,495 acres administered by the BLM Yuma Field Office and 38 acres administered by La Paz County to construct, operate and maintain, and decommission a utility-scale solar photovoltaic (PV) facility, called the Jove Solar Project (the Project). The Project would be located in southeastern La Paz County, Arizona, south of Interstate-10 midway between Phoenix

and the California border, approximately 22 miles east-southeast of the community of Brenda and the I–10/Highway 60 junction, and 30 miles west of the community of Tonopah. The Project, as proposed, would consist of up to 1.2 million solar PV modules and associated infrastructure, including new and improved roads, powerlines for collection and transmission of electricity, and operation and maintenance facilities. The Project would interconnect at the Cielo Azul Switchyard adjacent to the Ten West Link 500-kilovolt (kV) transmission line and have a generation capacity of 600 megawatts or more. The initial application in 2019 was received under the company name Taurus Solar; the project name was revised to Jove Solar in an amended application on August 9, 2022. The Project is proposed within a solar variance area identified in the BLM Western Solar Plan (2012), and after conducting the variance review process described in that Plan, the BLM has determined that it is appropriate for the project to move forward for additional review and analysis under NEPA.

The BLM's purpose and need is to respond to the ROW application for a 30-year grant for the Project submitted by the Applicant under FLPMA Title V (43 U.S.C. 1761). The BLM is responsible under FLPMA and its ROW regulations for managing the public lands under principles of multiple use and sustained yield, including by considering applications for the generation of electric energy on public lands. (43 U.S.C. 1761(a)(4)). In the course of reviewing applications for a ROW to generate electric energy on public lands, the BLM must comply with FLPMA, the BLM ROW regulations, the Council on Environmental Quality regulations implementing NEPA, the Department of the Interior NEPA regulations, and other applicable Federal laws and regulations.

Proposed Action and Alternatives

Under the Proposed Action, the BLM would grant a 30-year ROW for the Project, which would have a net generating capacity of 600 megawatts alternating current (MWac) and span 3,495 acres of public land administered by the BLM Yuma Field Office, as well as 38 acres of La Paz County land. The Project would include solar PV modules, direct current cabling and combining switchgear, inverters, voltage collection systems, transformers, monitoring and controls systems, operations and maintenance facilities, and above-ground electrical connection lines. The Project would use a

substation on an adjacent approved solar facility and connect into the regional transmission system via the Cielo Azul 500 kV switching station and Ten West Link 500 kV transmission line. Overhead 69 kV connection lines would extend approximately 2 miles in a proposed utility easement on La Paz County land to the Cielo Azul switching station. The Applicant has incorporated numerous design features into the Proposed Action to avoid or minimize adverse environmental effects during construction, operation, and decommissioning. These plans and procedures are provided as appendices to the Proposed Plan of Development and the Final EIS.

The Final EIS analyzes three alternatives:

- *No Action*, in which the BLM would not approve the ROW to authorize construction, operation and maintenance, and decommissioning of the Project, resulting in a continuation of existing conditions;
- *Proposed Action*, in which the BLM would approve the ROW to authorize construction, operation and maintenance, and decommissioning of the Project consistent with the detailed Project description above; and
- *Wash Avoidance Alternative*, in which the BLM would approve the ROW consistent with the design of the Proposed Action, except that the ROW would not authorize construction in a desert wash within the Project Area and near known environmentally sensitive sites, and would require using specified setbacks to enhance resource conservation opportunities.

Based on the analyses contained in the Final EIS for the proposed Jove Solar Project, and after carefully considering input from the public and cooperating agencies, the BLM has selected the *Wash Avoidance Alternative* as the preferred alternative, as it would further reduce impacts to native vegetation communities, wildlife movement, and natural hydrological drainage relative to the Proposed Action.

Public Participation

In addition to making the Draft EIS available for public comment, the BLM hosted one virtual public meeting during the comment period. The BLM received 26 written comments, including from Federal and State agencies, non-governmental organizations, construction and equipment vendors, Tribal Nations, and members of the general public. The BLM addressed these comments in the Final EIS. The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in

accordance with Executive Order 13175, the BLM Manual Section (MS) 1780, and other Departmental policies. Public comments received on the Draft EIS and internal BLM review were considered and incorporated as appropriate into the Final EIS. Public comments and internal BLM review resulted in the addition of clarifying text, including the elimination of sub-alternatives no longer being considered. The revisions and edits have not significantly changed the impact analyses.

Schedule for the Decision-Making Process

The BLM anticipates releasing a Record of Decision in December 2024. The BLM will decide whether to issue a decision granting, granting with modifications, or denying the application for the ROW.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, and 43 CFR part 2800)

Raymond Suazo,
State Director.

[FR Doc. 2024–26607 Filed 11–14–24; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NRNHL–DTS#–39042;
PPWOCRADIO, PCU00RP14.R50000]**

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before November 2, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by December 2, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW,

MS 7228, Washington, DC 20240, *sherry_frear@nps.gov*, 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 2, 2024. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

ALABAMA

Geneva County

Geneva Commercial Historic District, S Commerce St., E Church Ave., E Water Ave., E Town Ave., Geneva, SG100011147

Henry County

Headland Commercial Historic District, Four blocks in downtown Headland centered around the Public Square, Headland, SG100011166

ALASKA

Fairbanks North Star Borough

Chena Building, Chena River State Recreation Site, Mile 8 Chena Pump Road, Fairbanks vicinity, SG100011138

DISTRICT OF COLUMBIA

District of Columbia

de Veyra, Sofia Reyes Residence, 2610 Cathedral Avenue NW, Washington, SG100011144

IOWA

Johnson County

Iowa City Community Recreation Center, 220 S Gilbert St., Iowa City, SG100011133

MICHIGAN

Wayne County

Detroit Association of Women's Clubs Building (The Civil Rights Movement and the African American Experience in 20th Century Detroit MPS), 5461 Brush Street, Detroit, MP100011153

NORTH CAROLINA**Chatham County**

Johnson's Drive-In, 1520 East Eleventh Street,
Siler City, SG100011159

Durham County

Harriet Tubman YWCA, 312 East Umstead
Street, Durham, SG100011155

Guilford County

Loewenstein. Edward and Frances S., House,
2104 Granville Road, Greensboro,
SG100011157

South Benbow Road Historic District,
Roughly bounded by Julian Street and Ross
Avenue at the north: US-29 (South
O'Henry Boulevard) on the east; South side
Boulevard, Britton and Curry Streets on the
south: Dale, Larkin, and Logan Streets on
the west: and extending west through the
1000 block, Greensboro, SG100011158

Tanlea Woods, 2904 Wynnewood Drive,
Greensboro, SG100011160

Perquimans County

Hertford West Historic District, Dobbs St., W
Grubb St., Pennsylvania Ave., and adjacent
streets to the west of W Railroad Ave.,
Hertford, SG100011161

Rowan County

Fisher, John, House, 3850 East Ridge Road,
Salisbury vicinity, SG100011162

OKLAHOMA**Cleveland County**

Prairie House, 550 48th Avenue NE, Norman,
SG100011139

Oklahoma County

Classen's North Highland Parked Historic
District, Bounded by NE 13th St., Lincoln
Blvd., NE 16th St., and I-235, Oklahoma
City, SG100011140

Haywood, Dr. William L. and Susie Price,
Estate, 7100 North Sooner Road, Oklahoma
City, SG100011141

Rock House, 20000 NE 23rd Street, Harrah,
SG100011142

Pottawatomie County

Chisholm Springs Springhouse, Address
Restricted, Asher vicinity, SG100011143

PENNSYLVANIA**Lackawanna County**

Dickson Works (Boundary Increase), 225 &
215 Vine Street, Scranton, BC100011135

VIRGINIA**Essex County**

Hundley Hall and Hoskins Country Store,
381-383 Dunnsville Road, Dunnsville,
SG100011137

Henrico County

Indian Springs Farm Site 44HE1065, Address
Restricted, Sandston vicinity,
SG100011146

Westmoreland County

Woodbourne, 10908 Cople Highway, Kinsale,
SG100011145

A request for removal has been made
for the following resource(s):

GEORGIA**Fulton County**

Fulton County Almshouse, 215 W Wieuca
Rd. NW, Atlanta, OT13001169

MICHIGAN**St. Clair County**

USCGC BRAMBLE (cutter), 2336 Military St.,
Port Huron, OT12000457

Wayne County

Park Avenue Hotel, 2643 Park Ave., Detroit,
OT06000586

Cass, Lewis, Technical High School (Public
Schools of Detroit MPS), 2421 Second
Ave., Detroit, OT10000644

Jefferson Hall (East Jefferson Avenue
Residential TR), 1404 E Jefferson Ave.,
Detroit, OT85002939

Additional documentation has been
received for the following resource(s):

GEORGIA**Fulton County**

Atkins Park District (Additional
Documentation), St. Augustine St., St.
Charles, and St. Louis Pls. between N
Highland Ave. and Briarcliff Rd., Atlanta,
AD82004619

KENTUCKY**Kenton County**

Independence Historic District (Additional
Documentation), Portions of Madison &
McCullum Pikes, Independence,
AD16000500, Comment period: 0 days

NORTH CAROLINA**Durham County**

St. Joseph's African Methodist Episcopal
Church (Additional Documentation),
Fayetteville St. and Durham Expwy.,
Durham, AD76001319

PENNSYLVANIA**Lackawanna County**

Dickson Works (Additional Documentation),
225 Vine St., Scranton, AD79002251

Authority: Section 60.13 of 36 CFR
part 60.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2024-26653 Filed 11-14-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**Bureau of Ocean Energy Management**

[Docket No. BOEM-2024-0055]

**Notice of Availability of a Final
Environmental Impact Statement for
SouthCoast Wind Energy LLC's
Proposed SouthCoast Wind Energy
Project Offshore Massachusetts and
Rhode Island**

AGENCY: Bureau of Ocean Energy
Management, Interior.

ACTION: Notice of availability; final
environmental impact statement.

SUMMARY: The Bureau of Ocean Energy
Management (BOEM) announces the
availability of the final environmental
impact statement (FEIS) for SouthCoast
Wind Energy LLC's (SouthCoast Wind)
construction and operations plan (COP)
for its proposed SouthCoast Wind
Project (Project) offshore Massachusetts
and Rhode Island. The FEIS analyzes
the potential environmental impacts of
the Project as described in the COP (the
proposed action) and the alternatives to
the proposed action, including the no
action alternative. The FEIS will inform
BOEM's decision whether to approve,
approve with conditions, or disapprove
the COP.

ADDRESSES: The FEIS and detailed
information about the Project, including
the COP, can be found on BOEM's
website at: [https://www.boem.gov/
renewable-energy/state-activities/
southcoast-wind-formerly-mayflower-
wind](https://www.boem.gov/renewable-energy/state-activities/southcoast-wind-formerly-mayflower-wind).

FOR FURTHER INFORMATION CONTACT:
Genevieve Brune, BOEM Office of
Renewable Energy Programs, 45600
Woodland Road, Sterling, Virginia
20166, (703) 787-1553 or
genevieve.brune@boem.gov.

SUPPLEMENTARY INFORMATION:

Proposed Action: SouthCoast Wind
seeks approval to construct, operate,
and maintain a wind energy facility and
its associated export cables on the Outer
Continental Shelf (OCS) offshore
Massachusetts and Rhode Island. The
Project would be developed within the
range of design parameters outlined in
the SouthCoast Wind COP, subject to
the applicable mitigation measures.

The Project would be located about 26
nautical miles (nm) (48 kilometers)
south of Martha's Vineyard and 20 nm
(37 kilometers) south of Nantucket in
the area defined in BOEM's renewable
energy lease number OCS-A 0521
(Lease Area). The Lease Area covers
approximately 127,388 acres. The
Project would be developed in two parts
or projects: Project 1 refers to the

development in the northern portion of the Lease Area and associated interconnection, and Project 2 refers to the development in the southern portion of the Lease Area and associated interconnection. The Project would consist of up to 149 positions in the Lease Area to be occupied by up to 147 wind turbine generators and up to five offshore substation platforms (OSPs). The 149 positions will conform to a 1 nm x 1 nm grid layout with an east-west and north-south orientation, which lessees agreed would apply across all the Massachusetts and Rhode Island wind energy areas. The Project would include one preferred export cable corridor making landfall and interconnecting to the ISO New England Inc. (ISO-NE) grid at Brayton Point, in Somerset, Massachusetts. This preferred export cable corridor to Brayton Point would be used for both Project 1 and Project 2. The Project would also include one variant export cable corridor, which, if used, would make landfall and interconnect to the ISO-NE grid in the town of Falmouth, Massachusetts. In the event that technical, logistical, grid interconnection, or other unforeseen challenges arise during the design and engineering phase that prevent Project 2 from making interconnection at Brayton Point, Project 2 would use the Falmouth variant export cable corridor.

Alternatives: BOEM considered 17 alternatives when preparing the draft environmental impact statement and carried forward six alternatives for further analysis in the FEIS. These six alternatives include five action alternatives and the no action alternative. Eleven alternatives were not analyzed in detail, which are presented in FEIS chapter 2, because they did not meet the purpose and need for the proposed action or did not meet screening criteria. The screening criteria included consistency with law and regulations, technical and economic feasibility, environmental impacts, and geographic considerations.

Availability of the FEIS: The FEIS, SouthCoast Wind COP, and associated information are available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/southcoast-wind-formerly-mayflower-wind>. BOEM has distributed digital copies of the FEIS to all parties listed in FEIS Appendix M. If you require a flash drive or paper copy, BOEM will provide one upon request, as long as supplies are available. You may request a flash drive or paper copy of the FEIS by contacting Genevieve Brune at (703) 787-1553 or genevieve.brune@boem.gov.

Cooperating Agencies: The following Federal agencies and State governmental entities participated as cooperating agencies under the National Environmental Policy Act (NEPA) in the preparation of the FEIS: Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; New York Department of State; Massachusetts Office of Coastal Zone Management; and the Rhode Island Coastal Resources Management Council.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

*Chief, Office of Renewable Energy Programs,
Bureau of Ocean Energy Management.*

[FR Doc. 2024-26657 Filed 11-14-24; 8:45 am]

BILLING CODE 4340-98-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Utah State Plan; Change in Level of Federal Enforcement: Private-Sector Employment on Military Bases

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: Federal OSHA currently has coverage over private sector employers at Hill Air Force Base and the Tooele Army Depot while the Utah State Plan covers private sector employers on all other United States military facilities within the State. This document gives notice of OSHA's approval of a change to the State of Utah's Occupational Safety and Health State Plan reinstating Federal OSHA enforcement authority over private sector employment on all United States military facilities and bases in Utah.

DATES: Applicability Date: November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications: telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs: telephone: (202) 693-2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION: Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667 (OSH Act), provides that States that assume

responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State Plan. State Plan approval occurs in stages, which include initial approval under section 18(c) of the OSH Act and, ultimately, final approval under section 18(e), signifying relinquishment of Federal enforcement authority with respect to occupational safety and health issues covered by the State Plan.

The Utah State Plan was initially approved under section 18(c) of the OSH Act on January 10, 1973 (38 FR 1178). The Utah State Plan is administered by the Utah Occupational Safety and Health Division (UOSH) of the Utah Labor Commission. On July 16, 1985, OSHA announced the final approval of the Utah State Plan pursuant to section 18(e) and amended 29 CFR part 1952 to reflect the Assistant Secretary's decision (50 FR 28770). As a result, Federal OSHA relinquished its enforcement authority regarding occupational safety and health issues covered by the Utah State Plan.

The Utah State Plan covers most private sector and all State and local government workers. The Utah State Plan does not cover: Federal Government employers, including the United States Postal Service (USPS), contract workers and contractor-operated facilities engaged in USPS mail operations; maritime employment; employment at the United States Department of Energy's (DOE) Naval Petroleum and Oil Shale Reserve; all working conditions of aircraft cabin crewmembers onboard aircraft in operation; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where workers are engaged in "agricultural employment"—within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3)¹—regardless of the number of workers; and any hazard, industry, geographic area, operation, or facility over which the State is unable to effectively exercise authority for reasons not related to the required performance

¹ This includes workers engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Utah State Plan retains authority with respect to agricultural temporary labor camps engaged in egg, poultry, or red meat production or the post-harvest processing of agricultural or horticultural commodities. The Department of Labor Wage and Hour Division enforces the field sanitation standard and temporary labor camp standard with respect to the operations not covered by the Utah State Plan.

or structure of the plan. In addition, Federal OSHA retains enforcement of the anti-retaliation provision of the Occupational Safety and Health Act of 1970, section 11(c), 29 U.S.C. 660(c), with respect to the private sector. The Utah State Plan concurrently investigates private sector and State and local government workplace retaliation cases under a provision analogous to section 11(c). The Exceptions to the Utah State Plan's occupational safety and health coverage are listed on OSHA's website at <https://www.OSHA.gov/stateplans/ut>.

On March 25, 2024, the Utah State Plan requested that Federal OSHA resume enforcement authority over all private-sector employment on United States military facilities and bases within the State of Utah. Federal OSHA already retained enforcement authority over two bases in the State, Hill Air Force Base and the Tooele Army Depot, which includes the Tooele Chemical Demilitarization Facility. The Utah State Plan cited access restrictions impeding timely inspections and investigations on military installations as the primary reason for requesting this change in coverage. After discussions between Federal OSHA and the Utah State Plan, both agencies agreed that Federal OSHA coverage of all private sector employers on United States military facilities and bases was the best solution to ensure prompt and effective protection of private sector workers on such military facilities and bases in Utah. Accordingly, notice is hereby given of the change in Federal enforcement authority over private sector employers on all United States military facilities and bases in Utah, and coverage is transferred from the Utah State Plan to Federal OSHA.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58383), and 29 CFR parts 1902, 1953 and 1955.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–26535 Filed 11–14–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2025–009]

Freedom of Information Act (FOIA) Advisory Committee Meeting; Correction

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of meeting; correction.

SUMMARY: We published a notice in the **Federal Register** on November 6, 2024, concerning a notice of our December 5, 2024, Freedom of Information Act (FOIA) Advisory Committee. The notice contains an incorrect link required to view the meeting on the National Archives YouTube channel.

DATES: The document published at 89 FR 88066–88067 on November 6, 2024. The meeting date remains the same.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at foia-advisory-committee@nara.gov, or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 6, 2024, at 89 FR 88067, FR Doc. 2024–25756, on page 88067, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, in the third paragraph, following the phrase “National Archives YouTube channel”, the link is corrected to <https://www.youtube.com/live/NkKzcHhxEpU>.

Merrily Harris,

Committee Management Officer.

[FR Doc. 2024–26662 Filed 11–14–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Technology, Innovation and Partnerships; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Technology, Innovation and Partnerships (#84684) (Hybrid).

Date and Time: December 10, 2024; 12 p.m.–4 p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Hybrid).

The meeting will be hybrid, with some Advisory Committee members

participating in person and others participating virtually. Members of the public can view the meeting virtually. To attend the virtual meeting, please send your request for the virtual meeting link to the following email: afenzel@nsf.gov.

Type of Meeting: Open.

Contact Persons: Chaitanya Baru, Senior Advisor, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8050.

Additional meeting information, an updated agenda, and registration information will be posted on the AC's website at <https://new.nsf.gov/tip/tip-advisory-committee>.

Purpose of Meeting: To provide advice to the National Science Foundation concerning implementation of the provisions of the CHIPS and Science Act of 2022, Public Law 117–167, pertaining to the Directorate for Technology, Innovation and Partnerships (TIP), along with other related policies and activities of the Foundation.

Agenda

Tuesday, December 10, 2024

- Welcome and overview of the TIP Advisory Committee's charge
- Introduction to TIP, including current portfolio of investments and partnerships
- Strategic recommendations for TIP
- Next steps and closing remarks

Dated: November 8, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–26634 Filed 11–14–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral & Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Social, Behavioral & Economic Sciences (#1171) (Hybrid).

Date and Time: December 12–13, 2024; 10 a.m.–4 p.m. (eastern).

Place: NSF, 2415 Eisenhower Avenue, Room W 2210–2220, Alexandria, VA 22314 (In-Person and Virtual).

To attend in person: We encourage visitors to pre-register for the meeting by contacting Bela Jang at bejang@nsf.gov. All visitors are asked to check in at the

NSF visitor center on the first floor to receive a visitor pass before proceeding to Room W 2210–2220. A government-issued photo ID will be required to gain admission to the building. Get more information on the Visit NSF web page (<https://new.nsf.gov/about/visit>).

Please see the following link to learn how to attend the event via Zoom: <https://new.nsf.gov/events/fall-2024-social-behavioral-economic-sciences-advisory/2024-12-12>.

Type of Meeting: Open.

Contact Person: Andy DeSoto, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8700.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and strategies pertaining to SBE programs and activities.

Agenda:

- Welcome, Introductions, Approval of Previous Advisory Committee Meeting Summary, and Preview of Agenda
- Directorate for Social, Behavioral, and Economic Sciences (SBE) Update
- Current and Future SBE Contributions to the Bioeconomy
- Partnership between NSF and the National Endowment for the Humanities
- Meeting with NSF Leadership
- AC Member Presentation
- Discussion on SBE Value
- Discussion About Future Advisory Committee Meetings
- Wrap-up, Assignments, Closing Remarks

Dated: November 8, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–26633 Filed 11–14–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board hereby gives notice of the scheduling of a teleconference of the National Science Board/National Science Foundation Commission on Merit Review (MRX) for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: The MRX meeting is scheduled for Monday, November 18, 2024, from 3:00 p.m.–6:00 p.m. Eastern.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Commission Chair's remarks about the agenda; Discussion of Commission's draft report; and Commission Chair's closing remarks.

CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Chris Blair, cblair@nsf.gov, 703/292–7000. Meeting information and updates may be found at www.nsf.gov/nsb.

Ann E. Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2024–26765 Filed 11–13–24; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902056; NRC–2024–0146]

Tennessee Valley Authority; Clinch River Nuclear Site; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) for the Tennessee Valley Authority (TVA) exemption request for the Clinch River Nuclear (CRN) Site. Specifically, TVA is requesting an exemption, pursuant to NRC regulations, to allow the conduct of certain excavation support activities at the CRN Site prior to the issuance of a construction permit, which are otherwise not permitted by NRC regulations.

DATES: The EA and FONSI referenced in this document are available on November 15, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0146 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–2024–0146. Address questions about Docket IDs in [Regulations.gov](https://www.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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Joseph Giacinto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0714; email: Joseph.Giacinto@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

By application dated November 30, 2023, (ADAMS Accession No. ML23335A100), TVA submitted a request for an exemption from section 50.10 of title 10 of the *Code of Federal Regulations* (10 CFR) “License required; limited work authorization.” By letter dated January 31, 2024 (ADAMS Accession No. ML24009A168), the NRC staff informed TVA of its determination that the TVA exemption request was acceptable for docketing under Docket No. 99902056.

The NRC has prepared an EA (ADAMS Accession No. ML24312A321) as part of its review of the exemption request in accordance with the requirements of 10 CFR 51.21, “Criteria for and identification of licensing and regulatory actions requiring environmental assessments.” Based on the results of the EA, the NRC has determined not to prepare an environmental impact statement (EIS) and is issuing a FONSI pursuant to 10 CFR 51.31.

In accordance with 36 CFR 800.8(c), the NRC used the National Environmental Policy Act of 1969, as amended (NEPA) process to comply with section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

II. Discussion

The proposed action is for the NRC to issue an exemption authorizing the early excavation activities prior to the submittal of the construction permit (CP) application. The NRC issuance of the exemption would allow TVA to install and leave in place components of the initial ground support system for the reactor building (RB) excavation, such as rock bolts to secure unstable rock blocks, wire mesh and non-structural sprayed concrete linings to stabilize exposed rock walls, horizontal gravity drains to manage groundwater, and pressurized grout to seal water entry. The initial ground support system could also include steel soldier beams with timber lagging, rock bolts to secure soldier beams, and reinforced concrete compression rings to support the soldier beams. The exemption is needed due to the timing of initial ground support system installation, which serves no function with respect to structural RB support or radiological health or safety but is needed for construction worker safety during RB excavation. If excavation for the RB is delayed until after the issuance of the CP, the construction schedule and commercial operation could undergo a delay of 12–24 months. TVA anticipates that the cost of any delay of the commercial operation of Clinch River Nuclear Unit 1 would be substantial.

In the EA, the NRC staff assessed the potential direct and indirect environmental impacts from the proposed action associated with the following relevant resource areas: land use and visual resources, air quality and noise, hydrogeology and water resources, ecological resources, historic and cultural resources, socioeconomic and environmental justice, human health, and nonradiological waste management. The NRC staff determined that the environmental impacts of the proposed action would be SMALL for each potentially affected environmental resource, meaning that the environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource.

The NRC staff identified alternatives to the proposed action and the environmental impacts of the alternatives, as appropriate. The NRC staff determined that there are no alternatives that meet the need for the proposed action and that are environmentally preferable to the proposed action.

III. Finding of No Significant Impact

The proposed action before the NRC is whether to issue the exemption request authorizing early excavation at the CRN Site. As required by 10 CFR 51.21, the NRC prepared the EA. This FONSI incorporates by reference the EA summarized in Section II of this notice. Based on the NRC staff's determination in the EA that the environmental impacts would be SMALL for each potentially affected resource area, the NRC staff has determined that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the NRC staff has made a determination that the preparation of an EIS is not required for the proposed action and that a FONSI is warranted.

Dated: November 8, 2024.

For the Nuclear Regulatory Commission.

Daniel Barnhurst,

Chief, Environmental Project Management, Branch 3, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2024–26540 Filed 11–14–24; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of an information collection, with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information (with modifications) (OMB Control Number 1212–0054, expires January 31, 2025) related to PBGC's booklet, Qualified Domestic Relations Orders & PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by December 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.

All comments received will be posted without change to PBGC's website, www.pbgc.gov, including any personally identifiable information provided. Do not submit comments that include any personally identifiable information or confidential business information.

A copy of the request will be posted on PBGC's website at www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment. It may also be obtained without charge by writing to the Disclosure Division (disclosure@pbgc.gov), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; or, calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT:

Karen Levin (levin.karen@pbgc.gov), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3559. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders (DRO) that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the DRO meets specific legal requirements that make it a qualified domestic relations order (QDRO).

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a domestic relations order and the contents of such orders are established by statute. The models and the guidance provided by PBGC assist parties by making it easier for them to

comply with ERISA's QDRO requirements in plans trustee by PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

The existing collection of information was approved under OMB control number 1212-0054, expiring on January 31, 2025. On August 8, 2024, PBGC published in the **Federal Register** (at 89 FR 64965), a notice informing the public of its intent to request an extension of this collection of information, as modified. PBGC is adding one term and is clarifying other terms in the Glossary and is making other clarifying changes to the QDRO booklet. No comments were received. PBGC is requesting that OMB extend approval of the collection with modifications for 3 years. 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.

PBGC estimates that it will receive approximately 253 domestic relations orders each year from prospective alternate payees and participants. PBGC further estimates that the total average annual burden of this collection of information will be approximately 190 hours and \$177,100.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2024-26664 Filed 11-14-24; 8:45 am]

BILLING CODE 7709-02-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023-262; CP2024-7; MC2025-306; K2025-304; MC2025-307; K2025-305; MC2025-308; K2025-306; MC2025-309; K2025-307; MC2025-310; K2025-308; MC2025-311; K2025-309; MC2025-312; K2025-310; MC2025-313; K2025-311; MC2025-314; K2025-312; MC2025-315; K2025-313; MC2025-316; K2025-314; MC2025-317; K2025-315; MC2025-318; K2025-316; MC2025-319; K2025-317; MC2025-320; K2025-318; MC2025-321; K2025-319; MC2025-322; K2025-320; MC2025-323; K2025-321; MC2025-324; K2025-322; MC2025-325; K2025-323; MC2025-326; K2025-324; MC2025-327; K2025-325; MC2025-328; K2025-326; MC2025-329; K2025-327; MC2025-330; K2025-328; MC2025-331; K2025-329; MC2025-332; K2025-330; MC2025-333; K2025-331; MC2025-334; K2025-332]

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:* November 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. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

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).

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s):* CP2023-262; *Filing Title:* Request of the United States Postal Service Concerning Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 26, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 18, 2024.

2. *Docket No(s):* CP2024-7; *Filing Title:* Request of the United States Postal Service Concerning Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 28, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 18, 2024.

3. *Docket No(s):* MC2025-306 and K2025-304; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 439 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing*

20. *Docket No(s)*: MC2025-323 and K2025-321; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 665 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 7, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*:

Christopher Mohr; *Comments Due:* November 18, 2024.

21. *Docket No(s):* MC2025–324 and K2025–322; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 666 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 18, 2024.

22. *Docket No(s):* MC2025–325 and K2025–323; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 667 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 18, 2024.

23. *Docket No(s):* MC2025–326 and K2025–324; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 668 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 18, 2024.

24. *Docket No(s):* MC2025–327 and K2025–325; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 669 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* November 18, 2024.

25. *Docket No(s):* MC2025–328 and K2025–326; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 441 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 18, 2024.

26. *Docket No(s):* MC2025–329 and K2025–327; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 442 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR

3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* November 18, 2024.

27. *Docket No(s):* MC2025–330 and K2025–328; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 443 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* November 18, 2024.

28. *Docket No(s):* MC2025–331 and K2025–329; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 444 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 18, 2024.

29. *Docket No(s):* MC2025–332 and K2025–330; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 445 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 18, 2024.

30. *Docket No(s):* MC2025–333 and K2025–331; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 670 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 18, 2024.

31. *Docket No(s):* MC2025–334 and K2025–332; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 671 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 7, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 18, 2024.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–26632 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 650 to Competitive Product List*. Documents are available at www.prc.gov. Docket Nos. MC2025–308, K2025–306.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26581 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 664 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–322, K2025–320.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26589 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 430 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–271, K2025–269.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26558 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 444 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–331, K2025–329.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26609 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 433 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–289, K2025–287.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26561 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 633 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–281, K2025–279.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26550 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 651 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–309, K2025–307.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26582 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 678 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–342, K2025–340.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26621 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 631 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–279, K2025–277.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26548 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 659 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–317, K2025–315.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26605 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 632 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–280, K2025–278.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26549 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 682 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–347, K2025–345.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26625 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 628 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-276, K2025-274.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26544 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 443 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-330, K2025-328.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26597 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 437 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-304, K2025-302.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26567 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 673 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-336, K2025-334.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26616 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 638 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-287, K2025-285.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26556 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 448 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–352, K2025–350.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26630 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 684 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–350, K2025–348.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26627 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 649 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–303, K2025–301.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26580 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 643 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–294, K2025–292.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26574 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 655 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–313, K2025–311.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26601 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 676 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–339, K2025–337.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26619 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 440 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–307, K2025–305.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26570 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 635 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–283, K2025–281.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26552 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 669 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–327, K2025–325.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26594 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 665 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–323, K2025–321.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26590 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 641 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–292, K2025–290.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26572 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 675 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–338, K2025–336.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26618 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 647 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–301, K2025–299.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26578 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 681 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–346, K2025–344.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26624 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 439 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–306, K2025–304.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26569 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 653 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–311, K2025–309.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26599 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 441 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–328, K2025–326.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26595 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 644 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–295, K2025–293.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26575 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 671 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–334, K2025–332.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26614 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 652 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–310, K2025–308.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26583 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 680 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–345, K2025–343.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26623 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:*
November 15, 2024.

FOR FURTHER INFORMATION CONTACT:
Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 447 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–348, K2025–346.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26612 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 683 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–349, K2025–347.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26626 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 637 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–286, K2025–284.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26554 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 679 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–343, K2025–341.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26622 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 660 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–318, K2025–316.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26606 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 625 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–273, K2025–271.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26541 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 656 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–314, K2025–312.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26602 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 646 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–300, K2025–298.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26577 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 431 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–272, K2025–270.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26559 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 658 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–316, K2025–314.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26604 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 626 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–274, K2025–272.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26542 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 686 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-353, K2025-351.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26629 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 642 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-293, K2025-291.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26573 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 438 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-305, K2025-303.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26568 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 654 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-312, K2025-310.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26600 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 645 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-296, K2025-294.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26576 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 432 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–285, K2025–283.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26560 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 661 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–319, K2025–317.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26586 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 630 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–278, K2025–276.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26547 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 668 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–326, K2025–324.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26593 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 634 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–282, K2025–280.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26551 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 640 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–291, K2025–289.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26571 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 674 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–337, K2025–335.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26617 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 627 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–275, K2025–273.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26543 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 446 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–341, K2025–339.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26611 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 636 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–284, K2025–282.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26553 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 663 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–321, K2025–319.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26588 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 685 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-351, K2025-349.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26628 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 657 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-315, K2025-313.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26603 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 672 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-335, K2025-333.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26615 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 677 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-340, K2025-338.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26620 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 434 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-297, K2025-295.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-26564 Filed 11-14-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 629 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–277, K2025–275.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26546 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 435 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–298, K2025–296.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26565 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 639 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–290, K2025–288.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26557 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 442 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–329, K2025–327.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26596 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 436 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–299, K2025–297.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26566 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 624 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–270, K2025–268.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–26555 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 670 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–333, K2025–331.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26613 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 445 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025–332, K2025–330.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26610 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 667 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–325, K2025–323.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26592 Filed 11–14–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 666 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–324, K2025–322.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26591 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 6, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 648 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–302, K2025–300.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–26579 Filed 11–14–24; 8:45 am]

BILLING CODE 7710–12–P**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 15, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 662 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-320, K2025-318.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-26587 Filed 11-14-24; 8:45 am]

BILLING CODE 7710-12-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20734 and #20735; SOUTH CAROLINA Disaster Number SC-20013]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA-4829-DR), dated October 6, 2024.

Incident: Hurricane Helene.

DATES: Issued on November 7, 2024.

Incident Period: September 25, 2024, through October 7, 2024.

Physical Loan Application Deadline Date: December 5, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 7, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated October 6, 2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Beaufort.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-26646 Filed 11-14-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20666 and #20667; LOUISIANA Disaster Number LA-20007]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA-4817-DR), dated September 23, 2024.

Incident: Hurricane Francine.

DATES: Issued on November 7, 2024.

Incident Period: September 9, through September 12, 2024.

Physical Loan Application Deadline Date: November 22, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 23, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Louisiana, dated September 23, 2024, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Parishes: St. James, St. John The Baptist.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro C. Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-26652 Filed 11-14-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (IATF).

DATES: Wednesday, December 11, 2024, from 1 p.m. to 3:30 p.m. eastern time.

ADDRESSES: The public meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The virtual meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email veteransbusiness@sba.gov with subject line, "RSVP for December 11, 2024, IATF Virtual Public Meeting." To submit a written comment, individuals should email

veteransbusiness@sba.gov with subject line, "Response for December 11, 2024, IATF Virtual Public Meeting" no later than December 6, 2024, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205-6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period. Participants can join the meeting via computer at this link: <https://bit.ly/IATF-DEC24> or by phone. Call in (audio only): Dial: +1 206-413-7980; Phone Conference ID: 249 297 227#. Special accommodation requests should be directed to OVBD at (202) 205-6773 or veteransbusiness@sba.gov. All applicable documents will be posted on the IATF website prior to the meeting: <https://www.sba.gov/about-sba/sba-locations/headquarters-offices/office-veterans-business-development#sba-card-collection-heading-7153>. For more information on veteran-owned small business programs, please visit www.sba.gov/ovbd.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (IATF). The IATF is

established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the IATF's objectives for fiscal year 2025.

Dated: November 8, 2024.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2024-26648 Filed 11-14-24; 8:45 am]

BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21124]

Van Pool Transportation LLC— Acquisition of Control—Butler's Bus Service, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: Van Pool Transportation LLC (Van Pool) and AG Van Pool Holdings, LP (AG Holdings) (collectively, Applicants), both noncarriers, filed an application to acquire control of an interstate passenger motor carrier, Butler's Bus Service, Inc. (BBS), from its shareholders, Bruce Lyskawa and Emo Chynoweth (Sellers). The Board is tentatively approving and authorizing the transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by December 30, 2024. If any comments are filed, Van Pool may file a reply by January 14, 2025. If no opposing comments are filed by December 30, 2024, this notice shall be effective on December 31, 2024.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, send one copy of comments to Van Pool's representative: Kiefer A. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 740-5507. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application, Van Pool is a

Delaware limited liability company. (Appl. 1.) Applicants state that Van Pool is not a federally regulated carrier but that it indirectly owns and controls all equity and voting interest in 10 interstate passenger motor carriers (Affiliate Regulated Carriers) that are among its operating subsidiaries. (*Id.* at 2.) The Affiliate Regulated Carriers are:¹

- NRT Bus, Inc., which primarily provides non-regulated student transportation services for schools in Massachusetts (Essex, Middlesex, Norfolk, Suffolk, and Worcester counties), and occasional charter services;

- Trombly Motor Coach Service, Inc., which primarily provides non-regulated student transportation services for schools in Massachusetts (Essex and Middlesex counties), and occasional charter services;

- Salter Transportation, Inc., which primarily provides non-regulated student transportation services for schools in Massachusetts (Essex County) and southern New Hampshire, and occasional charter services;

- Easton Coach Company, LLC, which provides (i) intrastate paratransit, shuttle, and line-run services under contracts with regional transportation authorities and other organizations, primarily in New Jersey and eastern Pennsylvania, and (ii) private charter motor coach and shuttle services (interstate and intrastate), primarily in eastern Pennsylvania;

- F. M. Kuzmeskus, Inc., d/b/a Travel Kuz, which provides (i) non-regulated school bus transportation services, (ii) intrastate and interstate motor coach and limousine charter services, and (iii) limited intrastate and interstate charter services using school buses, all in western Massachusetts and southern Vermont;

- Alltown Bus Service Inc., which primarily provides non-regulated student transportation services for schools in the metropolitan area of Chicago, Ill., and its northern suburbs, and occasional charter services;

- DS Bus Lines, Inc., which primarily provides (i) non-regulated student transportation services for schools in Kansas (Beloit, Kansas City, Lincoln, Olathe, and Shawnee), Missouri (Belton and Smithville), Colorado (the metropolitan area of Denver), and Oklahoma (the metropolitan area of Tulsa), (ii) intrastate employee shuttle services in Colorado and Texas, and (iii) occasional charter services;

¹ Additional information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*See* Appl. 3-7, Ex. A.)

- Royal Coach Lines, Inc., which primarily provides (i) non-regulated student transportation services for schools in the metropolitan area of Westchester County, N.Y., and southern Connecticut, and (ii) contract and charter transportation services;

- PLSIII LLC, which primarily provides (i) disabled transportation services under contracts with private nonprofit organizations for fixed route and shuttle services in New York (Buffalo, western New York, Rochester, Utica and surrounding areas, and Poughkeepsie and surrounding areas), and (ii) very limited group day trip charter transportation services; and

- Local Motion, LLC, d/b/a Local Motion of Boston, which provides non-regulated school bus, charter, and shuttle services in the metropolitan area of Boston.²

According to the application, Van Pool also has operating subsidiaries that provide transportation services that do not involve regulated interstate transportation or require interstate passenger authority, primarily in the northeastern and central portions of the United States. (Appl. 2-3.) AG Holdings indirectly controls Van Pool via equity and voting interests through intermediary holding companies.³ (*Id.* at 3.)

The application explains that BBS, the carrier being acquired, operates as a

² In addition, the Board authorized, effective November 9, 2024, Applicants' acquisition of control of TransAction Corporate Shuttles, Inc. (TCS). *See Van Pool Transp. LLC—Acquis. of Control—TransAction Corp. Shuttles, Inc.*, MCF 21119, slip op. at 1 (STB served Sept. 27, 2024). TCS operates as a motor carrier primarily providing fixed-route commuter and municipal shuttle bus services and on-demand transportation for employees of businesses and communities in Massachusetts. *Id.* at 3. TCS also provides mini-bus, van, and limousine charter services for activities such as corporate and group outings, day trips, weddings, Bar/Bat Mitzvahs, and local events in Massachusetts. *Id.*

³ Specifically, Van Pool states that it is wholly owned by VP Intermediate Company (VP Intermediate), a Delaware corporation and noncarrier holding company, and that VP Intermediate is wholly owned by Beacon Mobility Corp. (Beacon Mobility), a Delaware corporation and noncarrier holding company. (Appl. 9.) Beacon Mobility is wholly owned by Beacon Mobility Intermediate Corp. (Beacon Intermediate), a Delaware corporation and noncarrier holding company. (*Id.*) Beacon Intermediate is wholly owned by Beacon Mobility Preferred Issuer, LLC (Beacon Preferred), a Delaware limited partnership and noncarrier holding company, and Beacon Preferred is wholly owned and controlled by Van Pool Group Holdings, L.P. (Group Holdings), a Delaware limited partnership and noncarrier holding company. (*Id.*) Group Holdings is majority-owned and controlled by AG Holdings, a Delaware limited partnership and noncarrier holding company. (*Id.*) AG Holdings is owned by investment funds affiliated with Audax Management Company, LLC, a Delaware limited liability company. (*Id.* at 9-10.)

motor carrier primarily providing regular home-to-school student transportation services in New Hampshire (the area encompassing the cities of Manchester, North Haverhill, Milford, and Center Barnstead) and in Vermont (the area encompassing the cities of Orleans, Lyndonville, and White River Junction). (*Id.* at 8.) BBS also provides limited intrastate and interstate charter services for wedding parties, camps, field trips, and other private events such as sporting events, office/corporate events, political rallies, social gatherings, and concerts. (*Id.*) In providing its services, BBS utilizes approximately 339 passenger vehicles (290 school buses with a seating capacity of 16 or more passengers, 13 passenger mini-buses with a seating capacity of 16 or more passengers, 8 vans with a seating capacity of 1 to 8 passengers, and 28 vans with a seating capacity of 9 to 15 passengers). (*Id.*) Furthermore, the USDOT number assigned to BBS is 1633191, and for purposes of its interstate passenger operations, BBS holds interstate carrier operating authority under FMCSA MC-602610. (*Id.*) According to the application, BBS is owned by Sellers, who are noncarriers and do not directly or indirectly own or control any other interstate passenger motor carriers. (*Id.* at 7.)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result from the proposed transaction, and (3) the interest of affected carrier employees. Van Pool has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (*See* Appl. 10–14.)

Applicants assert that the proposed transaction will not have a material, detrimental impact on the adequacy of transportation services available to the public. (*Id.* at 11.) According to Applicants, BBS will continue to provide the same services it currently provides under the same name; however, going forward, BBS will operate within the holdings of Applicants, which are experienced in

passenger transportation operations. (*Id.*) The transaction, combined with the passenger carrier management capacity of Applicants, is expected to result in improved operating efficiencies, increased equipment utilization rates, and cost savings derived from economies of scale within the Applicants' subsidiaries, all of which will help ensure the provision of adequate service to the public. (*Id.*) Applicants also assert that the addition of BBS will enhance the viability of Applicants' organization and its subsidiaries. (*Id.*)

Applicants state that the impact of the transaction on the regulated motor carrier industry will be minimal at most and that neither competition nor the public interest will be adversely affected. (*Id.* at 14.) According to Applicants, the demand for school bus transportation and charter services in the area served by BBS is strong and is expected to increase in the foreseeable future. (*Id.* at 13.) BBS competes directly with other passenger service providers in the area it serves, which is a competitive market because of the significant number of national, regional, and local providers operating within the area. (*Id.*) Other providers include Student Transportation of America, First Student, Durham, Caring Hands, WW Berry Transportation, and Lamoille Valley Transportation. (*Id.*) Applicants add that BBS's service area is geographically dispersed from those of the Affiliate Regulated Carriers and there is very limited overlap in the customer bases among the Affiliate Regulated Carriers and BBS.⁴ (*Id.*)

Applicants assert that the proposed transaction will increase fixed charges in the form of interest expenses because funds will be borrowed to assist in financing the transaction; however, Applicants state that the increase will not impact the provision of transportation services to the public. (*Id.* at 12.) Applicants also assert that they do not expect the transaction to have substantial impacts on employees or labor conditions, and they do not anticipate a measurable reduction in force or changes in compensation levels or benefits at BBS. (*Id.*) Applicants submit, however, that staffing redundancies could result in limited downsizing of back-office and/or managerial-level personnel. (*Id.*)

Based on Applicants' representations, the Board finds that the acquisition as proposed in the application is consistent with the public interest. The

⁴ There also appears to be little, if any, competitive overlap between BBS and TCS. *See* note 2, *supra*.

application will be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective on December 31, 2024, unless opposing comments are filed by December 30, 2024. If any comments are filed, Van Pool may file a reply by January 14, 2025.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: November 12, 2024.

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

Zantori Dickerson,
Clearance Clerk.

[FR Doc. 2024–26686 Filed 11–14–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21125]

Traxx Coachlines Ltd., Quick Coachlines Ltd., and Vancouver Tours & Transit Ltd. C/B/A Charter Bus Lines of British Columbia—Amalgamation of Three Companies Into One Under the Name Traxx Coachlines Ltd.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On October 18, 2024, interstate passenger motor carrier Traxx

Coachlines Ltd. (TCL) filed an application for Board approval to amalgamate (merge) its assets and operations with those of Quick Coachlines Ltd. (QCL) and Vancouver Tours & Transit Ltd. c/b/a Charter Bus Lines of British Columbia (VTT) (collectively, Applicants). Traxx Holdings Inc. (Traxx) currently owns 100% of the interest in TCL, QCL, and VTT, and Monarch Ventures Inc. (Monarch) currently owns 100% of Traxx. Upon completion of the proposed transaction, TCL, QCL, and VTT would merge into one entity—TCL—which would be 100% owned by Traxx. Monarch would continue to control Traxx. The Board is tentatively approving and authorizing the transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by December 30, 2024. If any comments are filed, Applicants may file a reply by January 14, 2025. If no opposing comments are filed by December 30, 2024, this notice shall be effective on December 31, 2024.

ADDRESSES: Comments, referring to Docket No. MCF 21125, may be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Stephen P. Flott, Esq., Flott & Co. PC, 2200 Wilson Boulevard, Suite 320, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application, which was filed under 49 U.S.C. 14303(a)(1), TCL provides a broad range of charter, transit, and tourism-related services across western Canada. (Appl. 2.) The application further states that QCL specializes in cross-border transportation, primarily providing scheduled service on routes between Vancouver, British Columbia, the lower mainland of British Columbia, and Sea-Tac Airport in Seattle, Wash. (*Id.* at 2-3.) Applicants note that QCL's services cater primarily to tourists and business travelers. (*Id.* at 3.) According to the application, VTT focuses on tourism services, providing sightseeing tours and charter services around Vancouver, British Columbia, and offering tourist destinations in the western United States. (*Id.*) Applicants assert that Traxx

owns 100% of TCL, QCL, and VTT,¹ and that, while each entity has maintained its unique branding, all operational management has been consolidated under Traxx, which, according to Applicants, has facilitated streamlined and consistent services across these entities. (*Id.* at 2.)²

The application states that, except for TCL, QCL, and VTT, there are no other affiliated carriers involved in the application. (*Id.* at 4.) The application further explains that Applicants have entered into an amalgamation agreement (the Amalgamation Agreement) whereby TCL, QCL, and VTT will merge into one entity (including all assets, vehicles, and business operations) and operate under the existing brand, TCL. (*Id.* at 3.) According to Applicants, the Amalgamation Agreement is scheduled to close no earlier than November 1, 2024, but in any event not before Board approval of this application. (*Id.*) Further, Applicants state that the goal of the proposed transaction is to enhance brand strength and simplify administrative processes while having minimal changes to the day-to-day operations of the applicable carriers. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5).

Applicants assert that granting the application would have no adverse impact on the adequacy of transportation services available for the public. (Appl. 4.) According to Applicants, the proposed transaction involves the combination of three

businesses owned and operated by Traxx. (*Id.*) Applicants state that TCL intends to continue the operations of the carriers essentially as they are now being conducted and that the public would not be affected by the transaction other than by a change in name for the applicable entities. (*Id.*)

Applicants further state that this transaction would have no effect on total fixed charges, and that no carrier employees would be adversely affected by the contemplated transaction as there would be no change in the carriers' day-to-day operations. (*Id.* at 4-5.)

Based on Applicants' representations, the Board finds that the merger as proposed in the application is consistent with the public interest. The application will be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective December 31, 2024, unless opposing comments are filed by December 30, 2024. If any comments are filed, Applicants may file a reply by January 14, 2025.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: November 12, 2024.

¹ Further information about TCL, QCL, and VTT, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*See* Appl., Exs. B, C, & D.)

² More information about Applicants' corporate structure and ownership can be found in the application. (*See* Appl. 1; *see also id.*, Ex. A.)

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

Stefan Rice,

Clearance Clerk.

[FR Doc. 2024–26678 Filed 11–14–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36806]

Old Line Holding Company, Inc., d/b/a Old Line Railroad—Acquisition and Operation Exemption—Line of The Maryland and Delaware Railroad Company

Old Line Holding Company, Inc., d/b/a Old Line Railroad (Old Line), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from The Maryland and Delaware Railroad Company (MDDE) and operate approximately 23.7 miles of rail line from milepost 42.0 in Selbyville, Del., to the end of the track at milepost 65.7 in Snow Hill, Md. (the Line). The verified notice states that Old Line is the parent company of MDDE, which currently operates the Line.

According to the verified notice, Old Line, MDDE, and Carload Express, Inc. (Carload), have entered into a purchase agreement dated August 1, 2024, which provides that Old Line will acquire the Line from MDDE and that Carload will concurrently acquire MDDE from Old Line.¹ Old Line states that, after consummating the proposed transaction, it will become a Class III rail carrier and operate the Line.

Old Line certifies that the transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. Old Line further certifies that its projected annual revenue will not exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier.

The earliest this transaction may be consummated is November 29, 2024, the effective date of the exemption. If the verified notice contains false or misleading information, the exemption

¹ In a concurrently filed petition for exemption, Carload, a noncarrier, seeks Board approval to acquire MDDE from Old Line. Pet. for Exemption 1, Carload Express, Inc.—Control Exemption—Md. & Del. R.R., FD 36807.

According to the verified notice, the purchase agreement further provides that Delmarva Central Railroad Company, a Class III rail carrier and subsidiary of Carload, will acquire from MDDE a 3-mile rail line that connects with the Line at Selbyville. See *Delmarva Cent. R.R.—Acquis. Exemption—Line of the Md. & Del. R.R.*, FD 36805 (STB served Oct. 4, 2024).

is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 22, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36806, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Old Line's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Old Line, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: November 8, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2024–26584 Filed 11–14–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36814]

Raritan Central Railway, LLC—Lease and Operation Exemption—Consolidated Rail Corporation

Raritan Central Railway, LLC (RCRY), a Class III railroad, has filed a verified notice of exemption pursuant to 49 CFR 1150.41, to permit it to operate, pursuant to an amendment to a lease with the Consolidated Rail Corporation (Conrail), approximately 3,000 linear feet of rail line in Middlesex County, NJ.

RCRY was previously authorized to lease from Conrail and to operate 7.08 miles of rail lines, consisting of four segments, all in Middlesex County. *Raritan Cent. Ry.—Lease & Operation Exemption—Consol. Rail Corp.*, FD 36393 (STB served Apr. 3, 2020). RCRY states that under the existing lease, one of the segments, the Raritan Industrial Track (the Raritan I.T.), extends from its connection with the Bonhamton I.T. to the east side of Crows Mill Road, including the at-grade crossing thereof. According to the verified notice, Conrail

currently operates on an additional 3,000 feet of rail line beyond the leased segment, and RCRY and Conrail have agreed to amend the lease to extend RCRY's lease and operation of the Raritan I.T. to include that additional 3,000-foot segment. RCRY states that following the amendment, RCRY will provide common carrier service on "the Raritan I.T. from its connection with the Bonhamton I.T. to the west side of Route 440 at [milepost] 20.06." (RCRY Verified Notice 2 (quoting the lease amendment).)

RCRY certifies that the track lease does not impose or include an interchange commitment. RCRY also certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million annually and will not result in the creation of a Class II or Class I carrier.

The transaction may be consummated on or after November 30, 2024, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 22, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36814, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on RCRY's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to RCRY, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: November 8, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina White,

Clearance Clerk.

[FR Doc. 2024–26697 Filed 11–14–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. FAA–2024–0366]****Agency Information Collection
Activities: Requests for Comments;
Clearance of a Renewed Approval of
Information Collection: Pilot
Professional Development****AGENCY:** Federal Aviation Administration (FAA), Department of Transportation.**ACTION:** Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 12, 2024. The collection involves requirements primarily applicable to air carriers conducting domestic, flag, and supplemental operations to enhance the professional development of pilots in those operations. The action requires air carriers conducting domestic, flag, and supplemental operations to provide new-hire pilots with an opportunity to observe flight operations and become familiar with procedures before serving as a flightcrew member in operations. Additionally, it requires air carriers who have not previously revised the upgrade training to include professional development and to provide leadership and command and mentoring training for all pilots in command. The information to be collected is necessary to mitigate incidents of unprofessional pilot behavior and reduce pilot errors that can lead to a catastrophic event.

DATES: Written comments should be submitted by December 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: Sandra Ray by email at: Sandra.ray@faa.gov; phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a)

Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0802.

Title: Pilot Professional Development.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 12, 2024 (89 FR 9902). The collection involves requirements primarily applicable to air carriers conducting domestic, flag, and supplemental operations to enhance the professional development of pilots in those operations. These amendments to part 121 set out prerequisites and levy requirements that must be met by certificate holders using part 121 pilot training and qualification programs and by those individuals who serve in given capacities for those certificate holders.

The FAA anticipates that certificate holders will incur costs for the following groups of provisions:

- Operations familiarization for new-hire pilots (§ 121.435);
- Leadership and command and mentoring ground training for pilots currently serving as pilot in command (PIC) (§ 121.429) and recurrent PIC leadership and command and mentoring ground training (§§ 121.409(b) and 121.427);
- Leadership and command training and recurrent leadership and command training for pilots serving as second in command (SIC) in operations that require three or more pilots (§ 121.432(a))
- Upgrade training curriculum requirements (§§ 121.420 and 121.426);
- Part 121, appendix H requirements; and
- Approval of Qualification Standards Document for certificate holders using an Advanced Qualification Program (AQP) (§ 121.909).

The development and approval of new and revised curriculums will be a one-time occurrence for each certificate holder. The documentation regarding training in leadership and command and mentoring for current PICs will be a one-time occurrence. Similarly, the documentation regarding training in leadership and command for current SICs serving in operations that require three or more pilots will be a one-time

occurrence. The documentation of operations familiarization for new-hire pilots will occur once for each new-hire pilot. The documentation of recurrent PIC leadership and command and mentoring training will occur every three years for each PIC. The documentation of recurrent leadership and command training for SICs serving in operations that require three or more pilots will occur every three years for each such SIC.

Respondents: Part 121 Air Carriers.

Frequency: Varies per Requirement.

Estimated Average Burden per

Response: Varies per Requirement.

Estimated Total Annual Burden: 341 Hours.

Issued in Washington, DC, on November 12, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–26694 Filed 11–14–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. FAA–2024–1902]****Agency Information Collection
Activities: Requests for Comments;
Clearance of a Renewed Approval of
Information Collection: Rotorcraft
External Load Operator Certificate
Application**

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 26, 2024. The collection involves the submission of FAA Form 8710–4 for the certification process of rotorcraft external-load operators. The information to be collected is necessary to evaluate the applicants’ qualifications for certification.

DATES: Written comments should be submitted by December 16, 2024.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Raymond Plessinger by email at: raymond.plessinger@faa.gov; phone: 717-443-7296

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120-0044.

Title: Rotorcraft External Load Operator Certificate Application.

Form Numbers: FAA Form 8710-4.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 26, 2024 (89 FR 53475). This collection involves the application for issuance or renewal of a 14 CFR part 133 Rotorcraft External Load Operator Certificate. Application for an original certificate or renewal of a certificate issued under 14 CFR part 133 is made on a form, and in a manner prescribed by the Administrator. The FAA form 8710-4 may be obtained from an FAA Flight Standards District Office, or online at <https://www.faa.gov/documentLibrary/media/form/faa8710-4.pdf>. The completed application is sent to the district office that has jurisdiction over the area in which the applicant's home base of operation is located.

The information collected includes: type of application, Operator's name/DBAs, telephone number, mailing address, physical address of the principal base of operations, chief pilot/designee name, airman certificate grade and number, rotorcraft make/model registration numbers to be used and load combinations requested. In addition, this information collection includes requirements to report emergency operations, plans for

operation over congested areas, and submission of flight manuals for approval, and recordkeeping requirements for certificates and crewmember testing and training records.

Respondents: 357 active part 133 certificate-holders.

Frequency: New applications when needed; current 14 CFR part 133 certificate-holders must renew every 24 months.

Estimated Average Burden per Response (by Section): Section 133.15, Application for Certificate Issuance or Renewal: 0.5 hours; Section 133.21, Personnel: 0.3 hours; Section 133.25, Amendment of Certificate: 0.5 hours; Section 133.27, Availability, transfer, and surrender of certificate: 0.5 hours; Section 133.31, Emergency Operations: 2 hours; Section 133.33, Operating Rules: 2 hours; Section 133.37, Crewmember training, currency, and testing requirements: 0.3 hours; Section 133.47, Rotorcraft Load Combination Flight Manual: 40 hours.

Estimated Total Annual Burden: 3,295 total hours per year, or 9.3 hours per respondent.

Issued in Washington, DC, on November 12, 2024.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2024-26675 Filed 11-14-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0073]

Notice of Intent To Prepare an Environmental Impact Statement for the Chesapeake Bay Crossing Study: Tier 2 National Environmental Policy Act (NEPA)

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (USDOT).

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The FHWA, in coordination with the Maryland Transportation Authority (MDTA), is issuing this Notice of Intent to solicit comments and advise the public, agencies, and stakeholders that an environmental impact statement will be prepared for the Chesapeake Bay Crossing Study: Tier 2 NEPA (Tier 2 Study) to address existing and future transportation issues at the William Preston Lane, Jr.

Memorial (Bay) Bridge and its approaches along U.S. 50/301, from Anne Arundel County on the Western Shore to Queen Anne's County on the Eastern Shore, in Maryland. The unique identification number for this project is EISX—XMD-1729253019. This NOI contains a summary of the information required in the Council on Environmental Quality (CEQ) regulations. This NOI should be reviewed together with the NOI Additional Project Information Document, which contains important details about the study, information on the Purpose and Need for the proposed action, alternatives considered, and expected impacts on the human, natural, and built environments. Persons and agencies who may be interested in or affected by the proposed study are encouraged to comment on the information in this NOI and the NOI Additional Project Information Document.

DATES: Comments on the NOI or the NOI Additional Information documents must be received on or before January 13, 2025.

ADDRESSES: This NOI and the NOI Additional Project Information Document are also available in the docket referenced above at www.regulations.gov and on the Tier 2 Study website located at <https://baycrossingstudy.com>.

Comments on the NOI or the NOI Additional Project Information Document can be submitted through the methods outlined below:

- *Website:* For access to the documents, go to the Federal Rulemaking Portal located at www.regulations.gov or the project website located at <https://baycrossingstudy.com>. Follow the online instructions for submitting comments at www.regulations.gov.

- *Mailing address or for hand delivery or courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *https://baycrossingstudy.com.*
- *Mailing address or for hand delivery or courier:* Maryland Transportation Authority, Division of Planning & Program Development, Bay Crossing Study, 2310 Broening Highway, Baltimore, Maryland 21224.

- *Email:* info@baycrossingstudy.com.
- *Call:* 667-203-5408.

All comment submissions should include the agency name and docket number that appear in the heading of this notice. The comments received by

the comment period end date of January 13, 2025, will be posted without change to www.regulations.gov, including any personal information provided. A summary of the comments received will be included in the forthcoming Draft EIS (DEIS).

For tracking purposes, the unique identification number for this project is EISX—XMD—1729253019.

FOR FURTHER INFORMATION CONTACT:

Heather Lowe, Project Manager, Maryland Transportation Authority, Division of Planning & Program Development, 2310 Broening Highway, Baltimore, MD 21224; Phone: (410) 537-5665; Email: info@baycrossingstudy.com; or Alexander Bienko, Environmental Protection Specialist, Federal Highway Administration, Maryland Division, 31 Hopkins Plaza, Suite 1520, Baltimore, MD 21201; Phone: (410) 779-7148; Email: alexander.bienko@dot.gov.

Interested parties can also sign up for the Tier 2 Study mailing list located at <https://baycrossingstudy.com> to receive notifications for future study information and upcoming public engagement opportunities.

SUPPLEMENTARY INFORMATION: The FHWA, as lead Federal agency, and the MDTA, as the project sponsor, will prepare an EIS for the Tier 2 Study, in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [U.S.C.] 4321, *et seq.*), 23 U.S.C. 139, CEQ regulations implementing NEPA (40 CFR 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139), and applicable Federal, State, and local governmental laws and regulations.

Project Background

The Chesapeake Bay Crossing Study (Bay Crossing Study) is a two-tiered preliminary engineering and environmental study to address existing and future transportation issues at the Bay Bridge and its approaches along U.S. 50/301. The Bay Bridge is a two-span structure that crosses the Chesapeake Bay from Anne Arundel County on the Western Shore to Queen Anne's County on the Eastern Shore.

The MDTA and FHWA initiated Tier 1 of the Bay Crossing Study (Tier 1 Study) in 2016. The Tier 1 Study EIS encompassed a broad geographic area that spanned nearly 100 miles of the Chesapeake Bay between Harford and Cecil counties to the north, and St. Mary's and Somerset counties to the south. The Tier 1 Study EIS defined existing and future transportation conditions and needs at the existing Bay

Bridge, evaluated 14 possible corridor alternative locations, documented the corridor alternative screening process, and concluded with the identification of a Selected Corridor Alternative. The Tier 1 Study was completed in April 2022 when FHWA issued a Final EIS/Record of Decision (FEIS/ROD) identifying the corridor including the existing Bay Bridge and its approaches (Corridor 7) as the Selected Corridor Alternative for further evaluation in a Tier 2 Study. Activities for the Tier 2 Study were launched in June 2022.

The Tier 2 Study, a project-level (site-specific) analysis, will describe potential environmental effects and evaluate alternatives of the proposed action. To ensure that all potential alternatives, important issues, or significant environmental effects and analyses relevant to the proposed action are considered in the EIS, comments and suggestions are invited from all affected or interested parties. The FHWA requests comments on the purpose and need, reasonable range of alternatives for evaluation in the EIS, existing environmental conditions and potential impacts, and identification of any relevant information, studies, or analyses concerning impacts affecting the quality of the human or natural environment. The purpose of this request is to bring relevant comments and information to FHWA's and MDTA's attention as early in the process as possible to enable the agencies involved to make maximum use of this information in the decision-making process. Comments may be submitted according to the instructions in the **ADDRESSES** section of this notice.

Purpose and Need for the Proposed Action

The Tier 1 Study purpose was to consider corridors for providing additional capacity and access across the Chesapeake Bay in order to improve mobility, travel reliability, and safety at the existing Bay Bridge. The evaluation of potential corridors included assessments of existing and potentially expanded transportation infrastructure needed to support additional capacity, improve travel times, and accommodate maintenance activities, while considering financial viability and environmental responsibility. The Selected Corridor Alternative was chosen because it would provide the greatest congestion relief at the existing bridge crossing for existing and future traffic volumes, particularly at peak hours, thus having the greatest ability to meet the Purpose and Need of the Tier 1 Study EIS.

The transportation issues identified during the Tier 1 Study have been further developed and refined to better describe the specific needs for the Tier 2 Study. The purpose of the Tier 2 Study is to address existing and future transportation capacity needs and access across the Chesapeake Bay and at the Chesapeake Bay Bridge approaches along the U.S. 50/301 corridor. The Tier 2 Study is evaluating measures to reduce congestion; improve travel times and reliability, mobility, and roadway deficiencies; and accommodate maintenance activities and navigation while minimizing impacts to local communities and the environment. The Tier 2 Study is also considering objectives for environmental responsibility, as well as cost and financial responsibility.

The Purpose and Need for the Tier 2 Study EIS was developed in close coordination with Cooperating and Participating agencies (see section 7.4 below or appendix B (Coordination Plan) for a list of Cooperating and Participating agencies). The MDTA presented the draft preliminary purpose and need to these agencies and the public in 2023 for comment. Based on the comments received, the MDTA completed a Preliminary Purpose and Need Statement and Report and received concurrence from the Cooperating agencies in 2024. The complete Tier 2 Study Preliminary Purpose and Need Statement and Report may be reviewed in Appendix A to the NOI Additional Project Information Document, which is available in the docket established for this study and on the study website. Comments on the Preliminary Purpose and Need for the study are welcomed during the NOI comment period.

Preliminary Description of the Proposed Action and Alternatives the Environmental Impact Statement Will Consider

The MDTA and FHWA propose to evaluate additional transportation capacity across the Chesapeake Bay along the U.S. 50/301 corridor (Corridor 7 from the Tier 1 Study EIS). The study limits for the Tier 2 Study EIS extend from the MD 2/MD 450 interchange on the Western Shore to the U.S. 50/301 split on the Eastern Shore. As part of the proposed action, the MDTA proposes removing the existing two Bay Bridge spans and replacing them with a new two-span bridge over the Chesapeake Bay.

The MDTA has identified seven alternatives for the proposed action, including the no-build alternative and six build alternatives. These alternatives

comprise the reasonable range of alternatives that will be evaluated in the Tier 2 Study EIS and are the MDTA's proposed Alternatives Retained for Detailed Study (ARDS). The proposed build alternatives would provide additional transportation capacity across the Chesapeake Bay on a new two-span bridge that would fully replace the travel lanes on the existing Bay Bridge spans. Consistent with FHWA and CEQ regulations, the No-Build Alternative is being considered and will be evaluated in the Tier 2 Study EIS. The proposed ARDS are:

- *Alternative A—No-Build*: retains the existing Chesapeake Bay Bridge, the U.S. 50/301 alignment, and the existing number of lanes: 6 lanes along U.S. 50/301 on the Western Shore, 5 lanes across the Chesapeake Bay on the existing bridge, and 6 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative B—6–8–6 North*: 6 lanes along U.S. 50/301 on the Western Shore, 8 lanes across the Chesapeake Bay on a new bridge to the north of the existing bridge, and 6 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative C—6–8–6 South*: 6 lanes along U.S. 50/301 on the Western Shore, 8 lanes across the Chesapeake Bay on a new bridge to the south of the existing bridge, and 6 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative D—8–8–8 North*: 8 lanes along U.S. 50/301 on the Western Shore, 8 lanes across the Chesapeake Bay on a new bridge to the north of the existing bridge, 8 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative E—8–8–8 South*: 8 lanes along U.S. 50/301 on the Western Shore, 8 lanes across the Chesapeake Bay on a new bridge to the south of the existing bridge, 8 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative F—8–10–8 North*: 8 lanes along U.S. 50/301 on the Western Shore, 10 lanes across the Chesapeake Bay on a new bridge to the north of the existing bridge, 8 lanes along U.S. 50/301 on the Eastern Shore
- *Alternative G—8–10–8 South*: 8 lanes along U.S. 50/301 on the Western Shore, 10 lanes across the Chesapeake Bay on a new bridge to the south of the existing bridge, 8 lanes along U.S. 50/301 on the Eastern Shore

All proposed build alternatives also include potential bus service improvements, Transportation System Management (TSM)/Transportation Demand Management (TDM) improvements, and consideration for the safe inclusion of a pedestrian/bicycle shared use path on the new

bridge. Additional information on the proposed ARDS, as well as maps and figures illustrating the study location are provided in the NOI Additional Project Information Document.

Based on the public and agency comments received in response to this NOI and the public scoping meetings, MDTA and FHWA will determine the reasonable range of alternatives. These will be identified and evaluated as the ARDS in the Tier 2 DEIS.

The MDTA and FHWA considered a number of additional options regarding the structure type, number of lanes, bridge location, travel mode (e.g., transit, ferry), and TSM/TDM strategies. These include a full-length tunnel, bridge-tunnel, double decker bridge, a 6–6–6 lane configuration, a 10–10–10 lane configuration, new bridge location fully between the existing Bay Bridge spans, a far-south new bridge location, ferry, high-capacity transit, ramp metering, express-local lanes, managed lanes, and a combined transit/TSM/TDM option. These options are not included in the proposed ARDS because MDTA does not consider them reasonable given the study's needs and objectives. Further information on the additional options considered but not recommended for advancement is included in the NOI Additional Project Information Document. The NOI Additional Project Information Document is available for review in the docket established for this study and on the Chesapeake Bay Crossing Study website as noted in the **ADDRESSES** section.

Brief Summary of Expected Effects

The Tier 2 Study EIS will evaluate potential effects to the human environment resulting from the reasonable range of alternatives. Based on information from the Tier 1 Study FEIS/ROD and early review of existing environmental conditions within and in proximity to U.S. 50/301 within the EIS study limits, the proposed action could result in direct, indirect, and/or cumulative effects to the following resources and environmental conditions:

- Socioeconomic resources and land use (including communities and land use; economics and employment; and visual resources)
- Minority and low-income populations
- Cultural and historic resources
- Section 4(f) and section 6(f) properties (including parks and recreational areas)
- Natural resources (such as wetlands and waters; floodplains; water quality; Coastal Barrier Resource Systems and Chesapeake Bay Critical Areas;

aquatic and terrestrial habitat and biota; rare, threatened, and endangered species; unique and sensitive areas; and hydrodynamics)

- Hazardous materials
- Air quality
- Greenhouse gas (GHG) and climate change
- Noise

Direct, indirect, and cumulative effects to these resources will be assessed in the Tier 2 Study EIS. Based on data collection, evaluation, and coordination with regulatory agencies and the public to date, it is anticipated that potential effects to natural resources, socioeconomic resources and land use, minority and low-income populations, cultural and historic resources, and section 4(f) and section 6(f) properties will be the focus of the Tier 2 Study EIS impact analysis.

- *Natural Resources*: Wetlands and water resources, as well as the terrestrial environment including forests, could be impacted by the proposed build alternatives.

- *Socioeconomic Resources and Land Use*: Potential effects to socioeconomic resources and land use include conversion of agriculture, forest, wetland, commercial, residential, and industrial land use adjacent to the U.S. 50/301 roadway right-of-way (ROW).

- *Minority and Low-Income Populations*: Potential effects to minority and low-income populations due to construction of a build alternative include, but are not limited to, conversion of commercial, residential, and industrial properties adjacent to the roadway ROW, as well as other potential environmental effects such as from noise and air quality that could affect these populations.

- *Cultural and Historic Resources*: Cultural, historic and archaeological resources may be affected by the proposed build alternatives.

- *Section 4(f) and section 6(f) Properties*: The build alternatives could result in permanent or temporary use of properties protected by section 4(f) of the U.S. Department of Transportation Act within the study limits. A Section 4(f) Evaluation will be prepared to assess the potential permanent, temporary, constructive, or de minimis use of section 4(f) properties. Analysis of potential impacts to properties protected by section 6(f) of the Land and Water Conservation Fund Act will also be conducted to determine whether a conversion of any section 6(f) property would occur.

Additional information on the expected impacts, including quantification of direct environmental

resource impacts potentially caused by the proposed ARDS, is provided in the NOI Additional Project Information Document available for review in the docket established for this study and on the Chesapeake Bay Crossing study website as noted in the **ADDRESSES** section. Comments on the expected impacts to be analyzed in the Tier 2 Study EIS are welcomed during the NOI comment period.

Anticipated Permits, Other Authorizations, and Cooperating and Participating Agencies

Anticipated permits and approvals (see NOI Additional Project Information Document (Table 7–1) for a detailed breakdown of anticipated permits and approvals) that could be required prior to the commencement of construction include:

- US Army Corps of Engineers (USACE) Civil Works approvals under the section 408/River and Harbors Act—section 14, and Clean Water Act section 404/River and Harbors Act—section 10, for review of impacts to Civil Works projects and the regulation of proposed discharges into Waters of the United States;
- United States Coast Guard (USCG) approval under the General Bridge Act/River and Harbors Act—section 9, for compliance with navigation requirements for bridges;
- Federal Aviation Administration (FAA) approval for Obstruction Evaluation/Airport Airspace Analysis, for construction activities near airports;
- Federal Emergency Management Agency (FEMA) approval under the National Flood Insurance Program;
- FHWA approval under section 4(f) of the U.S. Department of Transportation Act of 1966;
- National Park Service (NPS) approval under the Land and Water Conservation Fund Act, section 6(f), for approval for the conversion of land or facilities acquired under the Land and Water Conservation Fund;
- USFWS approvals under the Bald and Golden Eagle Protection Act, and Migratory Bird Treaty Act;
- USFWS and National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) approval under the Endangered Species Act and the Marine Mammal Act for federally protected species, as well as Fish and Wildlife Coordination Act, for the protection of species and coastal resources;
- NOAA NMFS approval under the Magnuson-Stevens Fishery Conservation and Management Act for Essential Fish Habitat;

- Natural Resources Conservation Service (NRCS) approval under the Farmland Protection Policy Act for the conversion of farmland;
- Maryland Department of the Environment (MDE) approvals under the Clean Water Act, section 401, Nontidal Wetlands Protection Act & Program, Sediment & Erosion Control Program, Stormwater Management regulations, Waterways Construction Statute, and MDE/Maryland Board of Public Works (BPW) approval under the Tidal Wetlands Act & Program, for consistency with water quality requirements and minimization of erosion, flooding, and impacts to wetlands;
- Maryland Department of Natural Resources (MDNR) approvals under the Coastal Zone Consistency & Coastal Zone Management Program, Forest Conservation Act, Nongame and Endangered Species Conservation Act, Reforestation Law, Roadside Tree Law, and MDNR Critical Area Commission approval under the Chesapeake Bay Critical Area Law, for the protection of roadside trees, forests, State threatened and endangered species, wetlands, and coastal areas;
- Maryland Department of Planning (MDP) coordination for the Maryland Smart Growth Act, for the preservation of resources and prevention of sprawling development into rural areas;
- State Historic Preservation Officer/Maryland Historical Trust (MHT) consultation under section 106 of the National Historic Preservation Act, including consultation with the Advisory Council on Historic Preservation (ACHP) as appropriate, for the protection of historic properties and resolution of any adverse effects; and
- SHA coordination for evaluation of alternatives that could affect SHA roadways and ROW.

Cooperating agencies include: USACE, USCG, EPA, NMFS, USFWS, NPS, SHA, MDE, and MDNR. Participating agencies include: the Federal Transit Administration (FTA), Advisory Council on Historic Preservation (ACHP), U.S. Navy—Naval Facilities Engineering Systems Command (NAVFAC), FEMA, FAA, Maryland Transit Administration (MTA), Maryland Port Administration (MPA), MDP, Maryland Department of Emergency Management (MDEM), BPW—Wetlands Division (BPW), MHT, Maryland Aviation Administration (MAA), Delaware Department of Transportation (DelDOT), Queen Anne's County, Anne Arundel County, and Baltimore Metropolitan Council (BMC).

The MDTA does not anticipate submitting applications for permits and

approvals that require design-level detail as part of NEPA or immediately following completion of the NEPA environmental review process. Per 23 U.S.C. 139(d)(10), the aforementioned permits and authorizations should be completed by no later than 90 days after the issuance of the Record of Decision. However, for this project the MDTA has requested in accordance with 23 U.S.C. 139(d)(10)(C)(ii) that those permits and authorizations follow a different timeline because the construction date is not expected until 2032. The development and review of applications for permits and other approvals will be completed as more detailed design and construction engineering progresses beyond the Tier 2 Study EIS. The NEPA study will be coordinated with the federal and state regulatory agencies based on their role as Cooperating and Participating Agencies.

Anticipated permits and approvals that could be required prior to the commencement of construction are also provided in the NOI Additional Project Information Document, which is available for review in the docket established for this study and on the Chesapeake Bay Crossing study website as noted in the **ADDRESSES** section.

Scoping and Public Review

Public and agency outreach will include formal Public Scoping Meetings in December 2024. A virtual meeting will be held on December 4, 2024, followed by two in person meetings on December 9 and 11, 2024. The December 2024 Scoping Meetings will present information from the NOI Additional Project Information Document, including existing environmental conditions, the proposed ARDS for the proposed action, and their potential environmental impacts. Public Hearings on the Tier 2 Study DEIS are anticipated in late 2025.

Pre-NOI public engagement activities for the Tier 2 Study were initiated shortly after FHWA issued the Tier 1 Study FEIS/ROD in spring 2022. To date, the MDTA has held two sets of Public Open Houses (one virtual Open House and two in-person Open Houses in September 2022 and one virtual Open House and two in-person Open Houses in September 2023), a Transit and Bicycle/Pedestrian Listening Meeting, and numerous community engagement events. The September 2022 meetings summarized the results of the Tier 1 Study EIS, described the objectives of the Tier 2 Study and presented next steps in the Tier 2 Study. The September 2023 Open Houses presented the study's proposed Purpose and Need and the alternatives development

process. Additional information on public engagement activities to date is provided in the NOI Additional Project Information Document available for review in the docket established for this study and on the Chesapeake Bay Crossing study website as noted in the **ADDRESSES** section of this notice.

Nineteen Interagency Coordination Meetings (ICMs) to facilitate Cooperating and Participating agency coordination have been held since June 2022. The MDTA and FHWA present information at ICMs about a variety of Tier 2 Study topics and seek agency feedback. All Cooperating and Participating agencies are encouraged to provide comments at ICMs. The ICMs will continue to be held throughout the NEPA environmental review process and development of the EIS. Additional information on agency coordination to date are provided in the NOI Additional Project Information Document available for review in the docket established for this study and on the Chesapeake Bay Crossing study website as noted in the **ADDRESSES** section of this notice.

Public notice has been given of the date, time, and location of the Public Scoping Meetings. To assist in determining the scope of issues to be addressed and identifying the potential for important issues related to information in the NOI Additional Project Information Document, the public will have the opportunity to submit written comments at the Public Scoping Meetings and during the scoping comment period beginning on the date of this NOI publication. Public input received during the scoping process will be considered in the development of the Tier 2 Study EIS. Once complete, the Tier 2 Study DEIS will be available for public and agency review and comment prior to the DEIS Public Hearing and for public review at the Tier 2 Study DEIS Public Hearing. All substantive public comments on the Tier 2 Study DEIS will be addressed in the Tier 2 Study FEIS.

The FHWA intends to issue a single document that consists of the Tier 2 Study FEIS and ROD pursuant to 49 U.S.C. 304a(b) [and 23 U.S.C. 139(n)(2)] unless FHWA determines that statutory criteria or practicability considerations preclude issuance of such a combined document.

Schedule for the Decision-Making Process

The Tier 2 Study EIS schedule will be established as part of the requirements of the NEPA environmental review process under 23 U.S.C. 139 and will comply with 40 CFR 1501.10(b)(2), which requires that environmental

reviews for major infrastructure projects occur within two years, and all necessary authorizations be issued efficiently and in a timely manner, in cooperation with FHWA.

Following the issuance of this NOI, FHWA and MDTA will coordinate with the Participating and Cooperating Agencies to develop study documentation and the Tier 2 Study DEIS.

The anticipated study schedule is outlined below:

- Public Scoping Meetings (December 2024)
- End of Scoping Comment Period (January 2025)
- Evaluation of Alternatives Retained for Detailed Study (February 2025–June 2025)
- MDTA's Recommended Preferred Alternative (July 2025)
- Tier 2 Study DEIS Notice of Availability (NOA) (November 2025)
- Tier 2 Study DEIS Comment Period and Public Hearings (December 2025)
- Tier 2 Study Final EIS/ROD (November 2026)
- Procurement for Final Design (Fall 2026–Spring 2028)
- Commence Final Design (Spring 2028)
- Permit Applications/Authorization Requests Submitted (Spring 2030)
- All Permit Decisions and Authorizations Issued (Spring 2031)
- Commence Construction (Summer 2032)

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

With this Notice, FHWA and MDTA request and encourage State, Tribal, and local government agencies, and the public, to review the NOI and NOI Additional Project Information Document and submit comments on any aspect of the study. To ensure that all potential alternatives, important issues, or environmental impacts and analyses relevant to the proposed action are considered in the Tier 2 Study DEIS, comments and suggestions are invited from all interested parties. Specifically, agencies and the public are asked to comment on the purpose and need, proposed ARDS, the existing environmental conditions and potential impacts, and the identification of any relevant information, studies, or analyses concerning impacts affecting the quality of the human environment for consideration by the Lead and Cooperating Agencies in developing the Tier 2 Study DEIS. The purpose of this request is to bring relevant comments and information to FHWA's and MDTA's attention as early in the process

as possible to enable the agencies to make maximum use of this information in decision making.

Comments must be received by January 13, 2025. Comments or questions concerning this proposed action, including comments relative to proposed ARDS, information and analyses, should be directed to FHWA and MDTA at the addresses provided in the **ADDRESSES** section of this notice.

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 139; 23 CFR part 771.

Valeriya Remezova,

Division Administrator, Federal Highway Administration.

[FR Doc. 2024–26545 Filed 11–14–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0018]

Withdrawal of a Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Highway Project in Clark County, Nevada

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (USDOT).

ACTION: Notice of withdrawal.

SUMMARY: The FHWA and the Nevada Department of Transportation (NDOT) are issuing this notice to advise the public that they are withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) published in the **Federal Register** for transportation improvements to a section of Interstate 11 (formerly I–515)/US 95/US 93 in the City of Las Vegas, Clark County, Nevada. The project is commonly referred to as the Downtown Access Project.

FOR FURTHER INFORMATION CONTACT:

For Federal Highway Administration: Abdelmoez Abdalla, Environmental Program Manager, FHWA Nevada Division, 705 N. Plaza, Suite 220, Carson City, NV 89701; Telephone: (775) 687–1231, email: abdelmoez.abdalla@dot.gov.

For the Nevada Department of Transportation (NDOT): Danja Petro, Senior Project Manager, Nevada Department of Transportation, 123 E Washington Ave., Las Vegas, NV 89101; Telephone: (702) 671–8865, email: dpetro@dot.nv.gov.

SUPPLEMENTARY INFORMATION: The FHWA, in coordination with NDOT, published an NOI on March 22, 2024, at 89 FR 20530, to prepare an EIS for transportation improvements to a

section of Interstate 11 (I-11)/U.S. Highway 95 (US 95)/US Highway 93 (US 93) in the City of Las Vegas, Clark County, Nevada, known as the Downtown Access Project. The agencies hereby notify the public of the withdrawal of this NOI. The EIS process is being rescinded due to recent and ongoing reprioritization of major projects within Nevada, as well as the escalating overall cost of the project.

Any future federally assisted action within this corridor would comply with the environmental review requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); 23 U.S.C. 139, CEQ regulations for implementing NEPA (40 Code of Regulations [CFR] 1500–1508); FHWA regulations implementing NEPA (23 CFR parts 771, 772, and 774); and applicable Federal, State, and local laws and regulations.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Khoa Nguyen,

Division Administrator, Carson City, Nevada.

[FR Doc. 2024–26631 Filed 11–14–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0034; Notice 2]

Toyo Tire Holdings of Americas Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Toyo Tire Holdings of Americas, Inc., (Toyo) has determined that certain Open Country R/T light truck tires, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles*. Toyo filed a noncompliance report dated March 15, 2021, and later amended it on April 2, 2021. Toyo simultaneously petitioned NHTSA on April 2, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Toyo's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview

Toyo has determined that certain Toyo Open Country R/T light truck tires, do not fully comply with paragraph S6.5(j) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles* (49 CFR 571.119). Toyo filed a noncompliance report dated March 15, 2021, and later amended it on April 2, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Toyo simultaneously petitioned NHTSA on April 2, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Toyo's petition was published with a 30-day public comment period, on May 19, 2022, in the **Federal Register** (87 FR 30556). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2021–0034.”

II. Tires Involved

Approximately 518 Toyo Open Country R/T light truck tires, size 35X12.50R20LT 125Q, manufactured between January 29, 2021, and March 8, 2021, are potentially involved.

III. Noncompliance

Toyo explains that the noncompliance was due to a mold error in which the sidewall with the partial TIN incorrectly states the load range as required by paragraph S6.5(j) of FMVSS No. 119. Specifically, the tires were marked: “LOAD RANGE E MAX.LOAD 1450 kg (3195 LBS) AT 450 kPa (65 PSI) COLD” when they should have been marked: “LOAD RANGE F MAX.LOAD 1650 kg (3640 LBS) AT 550 kPa (80 PSI) COLD.”

IV. Rule Requirements

Paragraph S6.5(j) of FMVSS No. 119 includes the requirements relevant to this petition. The subject tires are required to be marked on each sidewall with the letter designating the tire load range.

V. Summary of Toyo's Petition

The following views and arguments presented in this section, “V. Summary of Toyo's Petition,” are the views and

arguments provided by Toyo. They do not reflect the views of the Agency.

Toyo describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Toyo submitted the following reasoning:

Toyo explains that the noncompliance occurred as production transitioned from producing the load range ‘E’ tire to production of the load range ‘F’ tire.

Toyo states that “the affected tire mold was immediately corrected after this issue was discovered and all future production will have the correct load range letter shown on the non-serial sidewall.”

Toyo explains that “the 35X12.50R20LT tire size, Load Range E tires have a maximum load carrying capacity of 1,450 kg (3,195 lbs.) at 450 kPa (65 PSI); Load Range F tires have a maximum load carrying capacity of 1,650 kg (3,640 lbs.) at 550 kPa (80 PSI). Therefore, Toyo believes that in the event that “a consumer were to rely on the incorrect load range designation on the non-serial sidewall, there would be no associated risk of overloading.”

Toyo says that NHTSA has granted prior inconsequentiality petitions for noncompliances that are similar to the one described in the subject petition and cited sections from the following notices granting those petitions:

- Guizhou Tyre Corporation; Grant of Petition for Decision of Inconsequential Noncompliance. 78 FR 12828, February 25, 2013.

- Yokohama Tire Corporation, Grant of Petition for Decision of Inconsequential Noncompliance. 84 FR 64403, November 21, 2019.

- Tireco, Inc., Ruling on Petition for Decision of Inconsequential Noncompliance. 81 FR 58550, August 25, 2016.

Toyo says that the subject tires “meet all other performance and regulatory requirements of FMVSS No. 119.” Furthermore, Toyo says that it “has not received any complaints, claims, or warranty adjustments related to this noncompliance.”

Toyo concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety as these tires have a higher load carrying capacity than the incorrect marking indicates, therefore, the marking will not cause an operator to overload the tires. Thus, Toyo believes that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.¹ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.² Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

NHTSA has evaluated the merits of the petition submitted by Toyo and is granting Toyo's request for relief from notification and remedy of the affected tires based on the following.

1. Based on a review of Toyo's submission, the agency has no basis to believe that the subject tires do not meet all performance and marking requirements of FMVSS No. 119 with the exception of the incorrect load markings.

2. NHTSA agrees that the incorrect marking will not cause the operator to overload the tires because the marked load carrying capacity is lower than the actual load carrying capacity of the tire.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Toyo has met its

burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Toyo's petition is hereby granted, and Toyo is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that Toyo no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Toyo notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 2024-26539 Filed 11-14-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 700165]

Mutual Savings and Loan Association Metairie, Louisiana; Approval of Conversion Application

Notice is hereby given that on November 8, 2024, the Office of the Comptroller of the Currency (OCC) approved the application of Mutual Savings and Loan Association Metairie, Louisiana, to convert to the stock form of organization. Copies of the application are available on the OCC website at the FOIA Reading Room (<https://foia-pal.occ.gov/palMain.aspx>) under Mutual to Stock Conversion Applications. If you have any questions,

please contact Licensing Activities at (202) 649-6260.

(Authority: 12 CFR 192.205).

Dated: November 8, 2024.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2024-26680 Filed 11-14-24; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on November 12, 2024. See **SUPPLEMENTARY INFORMATION** section for relevant 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 the 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

On November 12, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osrarn Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

² See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

Individual:

BARAKALLAH, Abdel Rahman Joma'a (a.k.a. BARAK ALLAH, Abdelrahman Goma'a; a.k.a. BARAK ALLAH, Abdul-Rahman Juma; a.k.a. BARAKALLAH AHMAD, Abdelrahman Juma'a (Arabic: عبد الرحمن جمعة بارك الله احمد); a.k.a. BARKALLA, Abdelrahman Ahmed Guma; a.k.a. BARKTALLAH, Abdel-Rahman Juma (Arabic: عبد الرحمن جمعة بارك الله); a.k.a. TARBALAKALA, Abdel-Rahman Yumma), Sudan; DOB 01 Jan 1969; POB Bahr Elarab, East Darfur, Sudan; nationality Sudan; Gender Male; Passport P07834700 (Sudan); National ID No. 21052659309 (Sudan) (individual) [SUDAN-EO14098].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 14098 of May 4, 2023, "Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition," 88 FR 29529 (May 5, 2023) (E.O. 14908), for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces, an entity that has, or whose members have been responsible for, or complicit in, or to have directly or indirectly engaged or attempted to engage in actions or policies that threaten the peace, security, or stability of Sudan, relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024-26683 Filed 11-14-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Action**

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 removal of a person currently 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 this person is unblocked, and U.S. persons are permitted to engage in lawful transactions with them. OFAC is also publishing updates to the identifying information of three persons currently included on the SDN List.

DATES: This action was issued on October 30, 2024. See Supplementary Information for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202-622-2420; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On October 30, 2024, OFAC removed from the SDN List the person listed

below, whose property and interests in property were blocked pursuant to E.O. 14024. This person is no longer subject to the blocking provisions of E.O. 14024.

Individual

1. LENG, Holger, Tallinn, Estonia; Switzerland; DOB 12 Jun 1969; nationality Estonia; alt. nationality Switzerland; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024] (Linked To: MILUR SA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Milur SA, an entity whose property and interests in property are blocked pursuant to E.O. 14024.

On October 30, 2024, OFAC updated the entry on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Entities

1. THE SISTER TRUST, Switzerland; Bermuda; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 26 Jul 2016; Identification Number DBF5PV.00765.SF.756 (Switzerland) [RUSSIA-EO14024] (Linked To: USMANOV, Alisher Burhanovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Alisher Burhanovich Usmanov, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. LIMITED LIABILITY COMPANY NORNICHEL SFERA, North Tower, 8 Testovskaya Street, Moscow 123112, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9703095933 (Russia); Registration Number 1227700394415 (Russia) [RUSSIA-EO14024]. Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

3. PROMSVYAZBANK PUBLIC JOINT STOCK COMPANY (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО ПРОМСВЯЗЬБАНК) (f.k.a. OJSC PROMSVYAZBANK; a.k.a. PROMSVYAZBANK PAO (Cyrillic: ПАО ПРОМСВЯЗЬБАНК); a.k.a. PROMSVYAZBANK PJSC; a.k.a. PUBLICHNOE AKTSIONERNOE OBSHCHESTVO PROMSVYAZBANK), Smirnovskaya Street 10/22, Moscow 109052, Russia; Room 1308, SCITECH Tower22, Jianguomenwai Dajie, Beijing 100004, China; 7, MunirkaMarg, Vasant Vihar, New Delhi 110057, India; SWIFT/BIC PRMSRUMM; Website www.psbank.ru; BIK (RU) 044525555; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 2001; Target Type Financial Institution; Tax ID No. 7744000912 (Russia); Government Gazette Number 40148343 (Russia); Registration Number 1027739019142 (Russia) [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 and the financial services sector of the Russian Federation economy.

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.
[FR Doc. 2024-26667 Filed 11-14-24; 8:45 am]
BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Action**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these person are blocked, and U.S. persons are

generally prohibited from engaging in transactions with them.

DATES: This action was issued on August 23, 2024. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480;

or Assistant Director for Sanctions Compliance, 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On August 23, 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 authorities listed below.

BILLING CODE 4810–AL–C

Individuals

1. KOLESNIKOV, Mikhail Vladimirovich (Cyrillic: КОЛЕСНИКОВ, МИХАИЛ ВЛАДИМИРОВИЧ), Russia; DOB 28 May 1960; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 772706274117 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) 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 operating or having operated in the defense and related materiel sector of the Russian Federation economy.

2. FALCHINI, Massimo, Italy; DOB 22 Oct 1970; POB Florence, Italy; nationality Italy; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. FLCMSM70R22D612R (Italy) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

3. SALVADORI, Fulvio, Italy; DOB 05 Feb 1966; POB Siena, Italy; nationality Italy; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. SLVFLV66B05C847J (Italy) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

4. CHASTUHIN, Dmitriy (a.k.a. CHASTUKHIN, Dmitrii Vladimirovich), Saint Petersburg, Russia; DOB 20 Jul 1987; POB Cherepovets, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 651218162 (Russia) expires 14 Oct 2019 (individual) [RUSSIA-EO14024] (Linked To: OOO SOFT PLYUS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of OOO SOFT PLYUS, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. CHERBOV, Gleb Sergeyevich, Saint Petersburg, Russia; DOB 11 Jan 1989; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 720180335 (Russia) expires 12 Jul 2022 (individual) [RUSSIA-EO14024] (Linked To: OOO SOFT PLYUS).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OOO SOFT PLYUS, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. EVDOKIMOV, Dmitriy (a.k.a. EVDOKIMOV, Dmitrii Sergeyevich), 174, 22-4 Gzhatskaya, Saint Petersburg 195220, Russia; DOB 06 Jul 1989; POB Zaisan, Kazakhstan; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 729265707 (Russia) expires 11 Aug 2024 (individual) [RUSSIA-EO14024] (Linked To: CLOUDRUN LLC).

Designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of CLOUDRUN LLC, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. KAMBO, Taranjeet (a.k.a. KAMBO, Tarandzhit Singkh), Zanevsky Prospect, House 63, Saint Petersburg 195213, Russia; DOB 29 Mar 1976; POB India; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 750028082 (Russia) expires 24 May 2024 (individual) [RUSSIA-EO14024] (Linked To: OOO SOFT PLYUS).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of OOO SOFT PLYUS, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. KLIMINA, Yevgeniya (a.k.a. KLIMINA, Evgeniia; a.k.a. KLIMINA, Evgeniia Aleksandrovna; a.k.a. KLIMINA, Jane; a.k.a. KLIMINA, Yevgeniya Aleksandrovna), Moscow, Russia; Saint Petersburg, Russia; DOB 21 Dec 1978; POB Russia; nationality Russia; Gender Female; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 713169679 (Russia) expires 03 Feb 2021 (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the technology sector of the Russian Federation economy.

9. MEDVEDOVSKY, Ilya (a.k.a. MEDVEDOVSKII, Ilia Davidovich; a.k.a. MEDVEDOVSKIY, Ilya Davidovich), Saint Petersburg, Russia; DOB 25 Dec 1972; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 646432280 (Russia) expires 28 May 2017 (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the technology sector of the Russian Federation economy.

10. GRAZIOTTIN, Flavio, Via Villaggio Brugherio 9, Brugherio 20861, Italy; DOB 13 May 1943; POB Cantu, Italy; nationality Italy; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport YA6213608 (Italy) expires 19 Mar 2024; Tax ID No. GRZFLV43E13B639Y (Italy) (individual) [RUSSIA-EO14024] (Linked To: IDRONAUT S.R.L.).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, IDRONAUT S.R.L., a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. SPIRIDONOV, Viktor Georgiyevich (a.k.a. SPIRIDONOV, Victor), Russia; DOB 28 Sep 1947; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 510217313 (Russia); alt. Passport 725913360 (Russia) expires 22 Aug 2023 (individual) [RUSSIA-EO14024] (Linked To: TECHNOPOLE COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, TECHNOPOLE COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. VORONKOV, Alexander Petrovich (Cyrillic: БОРОНКОВ, АЛЕКСАНДР ПЕТРОВИЧ) (a.k.a. VORONKOV, Aleksandr Petrovich), Moscow, Russia; DOB 21 Jul 1955; POB Stavropol, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 4605858380 (Russia); Tax ID No. 501001048875 (Russia) (individual) [RUSSIA-EO14024] (Linked To: TECHNOPOLE COMPANY).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, TECHNOPOLE COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. YANG, Liu (a.k.a. "YANG, Jason"), Daqiaobei Road, Room 201 Unit 1 Building 4 No. 32, Liling, Hunan 412299, China; DOB 06 Dec 1985; POB Liling, China; nationality China; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport E12074567 (China) issued 25 Feb 2013 expires 24 Feb 2023; National ID No. 430281198512065656 (China) (individual) [RUSSIA-EO14024] (Linked To: SHANGHAI OCEANEN ENVIRONMENTAL SCIENCE AND TECHNOLOGY CO., LTD.).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, SHANGHAI OCEANEN ENVIRONMENTAL SCIENCE AND TECHNOLOGY CO., LTD., a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. GUZEY, Vladislav Faridovich, United Arab Emirates; DOB 23 Jan 1996; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 711034707 (Russia) (individual) [RUSSIA-

EO14024] (Linked To: SUDAKOV, Andrey Dmitriyevich).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of SUDAKOV, Andrey Dmitriyevich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. LINS, Alexander Franz Josef, Matschils 5, Triesen 9495, Liechtenstein; DOB 1967; nationality Austria; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the trust and corporate formation services sector of the Russian Federation economy.

16. WOLF, Stefan Anton, Liechtenstein; DOB 23 Apr 1976; nationality Austria; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the trust and corporate formation services sector of the Russian Federation economy.

17. WYSS, Anton Daniel, Im Duxer, Schaan 9494, Liechtenstein; DOB 1971; nationality Switzerland; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the trust and corporate formation services sector of the Russian Federation economy.

18. KALINOV, Konstantin Svyatoslavovich, Moscow, Russia; Tallinn, Estonia; DOB 19 May 1983; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

19. PUSHKOV, Aleksandr Aleksandrovich (a.k.a. PUSHKOV, Alexander), Moscow, Russia; Tallinn, Estonia; DOB 11 May 1983; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

20. GABITOV, Marat Khanbalevich, Moscow, Russia; DOB 14 Jun 1956; POB Kirov, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; National ID No. 4509776350 (Russia); Tax ID No. 501003306539 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

21. SFOGLIETTI, Giulio, Via Lorenzo Rocci 14, Rome, Lazio 00151, Italy; DOB 02 Apr 1960; POB Rome, Italy; nationality Italy; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport YB3263805 (Italy); Tax ID No. SFGGLI60D02H501T (Italy) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

22. TAHIRBEYOGLU, Hayri, Istanbul, Turkey; DOB 29 Jan 1965; POB Istanbul, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

23. REUTOV, Igor Aleksandrovich, France; DOB 17 Nov 1973; POB Novozybkov, Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024. (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

24. ORLOFF, Alexandre (a.k.a. "XIAO MA, Alexandre"), Ch. du Nant-de-Creve-Couer 16, Versoix 1290, Switzerland; United Arab Emirates; 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom; DOB 30 Jul 1969; POB Lausanne, Switzerland; nationality Switzerland; alt. nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport X3571033 (Switzerland) expires 17 Jul 2023; alt. Passport 531180646 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Entities

1. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU KONSTRUKTORSKOE BYURO VOSTOK (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КОНСТРУКТОРСКОЕ БЮРО ВОСТОК) (a.k.a. KB VOSTOK; a.k.a. KB VOSTOK OOO (Cyrillic: ООО КБ ВОСТОК); a.k.a. KONSTRUKTORSKOE BYURO VOSTOK; a.k.a. VOSTOK DESIGN BUREAU), ul. Elektrozavodskaya, D. 63, Office 2, Ryazan, Ryazan Oblast 390023, Russia; Website vostok-kb.ru; Secondary sanctions risk: See

Section 11 of Executive Order 14024.; Organization Established Date 07 Jul 2023; Organization Type: Manufacture of air and spacecraft and related machinery; Digital Currency Address - USDT TLM3zA3EWycoDX4ZX4gKze7sgfbdkntTum; Tax ID No. 6234204579 (Russia); Government Gazette Number 57929885 (Russia); Business Registration Number 1236200005612 (Russia) [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.

2. TRV ENGINEERING JSC (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТРВ-ИНЖИНИРИНГ) (a.k.a. AKTSIONERNOE OBSHCHESTVO TRV INZHINIRING; a.k.a. JOINT STOCK COMPANY TOGOVIY DOM ZVEZDA-STRELA; a.k.a. TD ZVEZDA-STRELA OOO; a.k.a. TRV INZHINIRING AO (Cyrillic: АО ТРВ-ИНЖИНИРИНГ); a.k.a. ZVEZDA-STRELA TRADING HOUSE LLC (Cyrillic: ООО ТОРГОВЫЙ ДОМ ЗВЕЗДА-СТРЕЛА)), ul. Ordzhonikidze, D. 2A, Korolev, Moscow Oblast 141076, Russia (Cyrillic: УЛ ОРДЖОНИКИДЗЕ, Д. 2А, КОРОЛЁВ, МОСКОВСКАЯ ОБЛАСТЬ 141076, Russia); Website www.trv-e.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 25 Dec 2006; Tax ID No. 5018205784 (Russia); Government Gazette Number 46252304 (Russia); Business Registration Number 1205000099941 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the defense and related materiel sector of the Russian Federation economy.

3. SILIBORN TECHNOLOGY LIMITED, Flat 2, 8F, 3 Haufook St, Kln, Tsim Sha Tsui, Hong Kong 999077, China; Rm 2 8/F WORKINGPORT COM'L BLDG, Tsim Sha Tsui, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Apr 2023; Business Registration Number 75241605 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

4. LIMITED LIABILITY COMPANY 4TEST (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ 4ТЕСТ), UL. Usievicha D. 23, POM.IA ET 1 KOM 1-5, 9A, 10-12, Moscow 125315, Russia; Website www.4test.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 08 Apr 2016; Tax ID No. 7702399942 (Russia); Registration Number 1167746353257 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

5. LIMITED LIABILITY COMPANY AFINOR (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АФИНОР), Ul Bykovskogo D. 1, Voskresensk 140208, Russia; Website afinor.biz; Secondary sanctions risk: See

Section 11 of Executive Order 14024.; Organization Established Date 22 Mar 1999; Tax ID No. 5005028619 (Russia); Registration Number 1025000930350 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

6. LIMITED LIABILITY COMPANY ALFA INSTRUMENTS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ АЛЬФА ИНСТРУМЕНТС), Ul Lineinaya D.28, Office 515, Novosibirsk, 630049, Russia; Website alfa-instr.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 10 Jul 2013; Tax ID No. 5402565306 (Russia); Registration Number 1135476111870 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

7. LIMITED LIABILITY COMPANY COMPANY SCAN (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ КОМПАНИЯ СКАН), Ul Zoi I Aleksandra Kosmodemyanskikh, D. 26/21, Str. 1, Pom. 1/4, Moscow, 125130, Russia; Leningradskoe sh., d. 4, corp. 1, 1 et., pom. III, Moscow 125080, Russia; Website comscan.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 24 Nov 2011; Tax ID No. 7734668980 (Russia); Registration Number 1117746953400 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

8. LIMITED LIABILITY COMPANY ETM PHOTONICS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ЕТМ ФОТОНИКС), Ul. Rentgena D. 7, Lit. A, Pomeshch. 1-N, Office 300, Saint Petersburg 197101, Russia; D. 8 2nd Roshchinsky Proezd, Str. 1, Office 121, Moscow 115419, Russia; Website etm-p.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 10 Feb 2021; Tax ID No. 7813650745 (Russia); Registration Number 1217800019051 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

9. LIMITED LIABILITY COMPANY NPK TESART (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ НПК ТЕСАРТ), Ul Tsiolkovskogo D. 19, Kabinet 318, Tomsk 634015, Russia; Website tesart.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 May 2015; Tax ID No. 7017376646 (Russia); Registration Number 1157017008170 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

10. LIMITED LIABILITY COMPANY TC ELEMENT (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ТК ЭЛЕМЕНТ), d. 1 str. 6 kom. 7;8, shosse Varshavskoe, Moscow 117105, Russia; Website element-msc.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 05 May 2011; Tax ID No. 7705949312 (Russia); Registration Number 1117746362876 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

11. FOSHAN GOLDEN AGE MOTOR TECHNOLOGY CO., LTD., Taoyuan Road (Workshop A), Songxia Industrial Zone, Shishan Town, Foshan, Guangdong, China; Website gkmotor.com; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Aug 2015; Unified Social Credit Code (USCC) 914406003519682752 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

12. LIMITED LIABILITY COMPANY МЕХАТРОНИКА (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МЕХАТРОНИКА), Ul. Lebedeva-Kumacha D. 2A, Pomeshcheniya 47, 48, 49, 50, 51, Ivanovo 153021, Russia; Website mtronics.ru; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 Nov 2012; Tax ID No. 3702686347 (Russia); Registration Number 1123702031760 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

13. PUBLICHNOE AKTSIONERNOE OBSHESTVO MAGNITOGORSKIY METALLURGICHESKIY KOMBINAT (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО МАГНИТОГОРСКИЙ МЕТАЛЛУРГИЧЕСКИЙ КОМБИНАТ) (a.k.a. MAGNITOGORSK IRON & STEEL WORKS; a.k.a. MAGNITOGORSK IRON AND STEEL WORKS PJSC; a.k.a. OPEN JOINT STOCK COMPANY MAGNITOGORSK IRON & STEEL WORKS; a.k.a. PUBLIC JOINT STOCK COMPANY MAGNITOGORSK METALLURGICAL COMBINE; a.k.a. "ММК PAO"; a.k.a. "PJSC MMK" (Cyrillic: "ПАО ММК")), 93 Kirov Street, Magnitogorsk 455000, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 1932; Tax ID No. 7414003633 (Russia); Government Gazette Number 00186424 (Russia); Legal Entity Number 253400XSJ4C01YMCXG44 (Russia); Registration Number 1027402166835 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

14. AKTSIONERNOE OBSHCHESTVO NORILSK AVIA (a.k.a. NORILSK AVIA AO), d. 4A etazh 3, ul. Ordzhonikidze, Norilsk, Krasnoyarsk region 663319, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457077334 (Russia); Registration Number 1142468039075 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the aerospace sector of the Russian Federation economy.

15. AKTSIONERNOE OBSHCHESTVO NORILSKI GORNO METALLURGICHESKI KOMBINAT IM AP ZAVENYAGINA (a.k.a. AO NORILSK KOMBINAT; a.k.a. AO NORILSKII KOMBINAT; a.k.a. NORILSKI KOMBINAT AO), 2, pl. Gvardeiskaya, Norilsk, Krasnoyarsk region 663302, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457009990 (Russia); Registration Number 1022401625003 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

16. AKTSIONERNOE OBSHCHESTVO TAIMYRSKAYA TOPLIVNAYA KOMPANIYA (a.k.a. JSC TAIMYR FUEL COMPANY; f.k.a. TAIMYRSKAYA TOPLIVNAYA KOMPANIYA AO; a.k.a. "JSC TTK"; a.k.a. "TTK AO"), 15, ul. Bograda, Krasnoyarsk, Krasnoyarsk region 660049, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2460047153 (Russia); Registration Number 1022401787418 (Russia) [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.

17. LIMITED LIABILITY COMPANY BASEALT (a.k.a. BASEALT LLC), d. 75, ofis 307, ul. Butyrskaya, Moscow 127015, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7714350892 (Russia); Registration Number 1157746734837 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

18. LIMITED LIABILITY COMPANY GRK BYSTRINSKOE (a.k.a. LLC GRK BYSTRINSKOE; a.k.a. "GRK BYSTRINSKOYE"), d. 99g soor. 1, ul. Shilova, Chita, Zabaykalskiy kray 672038, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7701568891 (Russia); Registration Number 1047796898600 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

19. LIMITED LIABILITY COMPANY NORNICKEL SFERA, North Tower, 8 Testovskaya Street, Moscow 123112, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7743773042 (Russia);

Registration Number 1107746199043 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

20. LIMITED LIABILITY COMPANY NORNICKEL SPUTNIK, d. 11 k. 2 kom. 511, proezd Staropetrovski, Moscow 125130, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7743773042 (Russia); Registration Number 1107746199043 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

21. LIMITED LIABILITY COMPANY NORNICKEL TECHNICAL SERVICES (a.k.a. LLC NN TECHNICAL SERVICES; a.k.a. "NN TEKHNIЧЕСKIE SERVISY"), d. 11 litera A kom. 391, prospekt Grazhdanski, St. Petersburg 195220, Russia; Promyshlennaya Zona OOO Norilskgeologiya D.1, Norilsk 663330, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457063268 (Russia); Registration Number 1062457033770 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

22. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AP INVEST (a.k.a. AP INVEST OOO), d. 2 kab. 318, pl. Gvardeiskaya, Norilsk, Krasnoyarsk region 663302, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457084476 (Russia); Registration Number 1192468003815 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

23. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU INSTITUT GIPRONIKEL (a.k.a. GIPRONICKEL INSTITUTE; a.k.a. INSTITUT GIPRONIKEL OOO), d. 11, prospekt Grazhdanski, St. Petersburg 195220, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7804349796 (Russia); Registration Number 5067847542967 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the engineering sector of the Russian Federation economy.

24. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU NN DEVELOPMENT (a.k.a. "NN DEVELOPMENT OOO"), Ul. Testovskaya D. 10, Office 19-35, Floor 19, Moscow 123112, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9703033366 (Russia); Registration Number 1217700200343 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the engineering sector of the Russian Federation economy.

25. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU NORILSKI OBESPECHIVAYUSHCHI KOMPLEKS (a.k.a. LLC NORILSKYI OBESPECHIVAYUSHYI COMPLEX; a.k.a. NORILSKI OBESPECHIVAYUSHCHI KOMPLEKS OOO; a.k.a. NORILSKY OBESPECHIVAYUSHCHY KOMPLEKS LIMITED LIABILITY COMPANY), 64, ul. Nansena, Norilsk, Krasnoyarsk region 663319, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457061920 (Russia); Registration Number 1062457024123 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

26. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU NORILSKI PROMYSHLENNY TRANSPORT (a.k.a. LIMITED LIABILITY COMPANY NORILSK INDUSTRIAL TRANSPORT; a.k.a. NORILSKII PROMYSHLENNYI TRANSPORT; a.k.a. NORILSKPROMTRANSPORT OOO), d. 6 k. V, ul. Oktyabrskaya, Norilsk, Krasnoyarsk region 663316, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457063821 (Russia); Registration Number 1072457002749 (Russia) [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.

27. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU NORILSKNIKELREMONT (a.k.a. NORILSKNIKELREMONT OOO), Pl. Gvardeiskaya D. 2, Norilsk 663302, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457061937 (Russia); Registration Number 1062457024167 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

28. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU PECHENGSKOE STROITELNOE OBEDINENIE (a.k.a. LLC PECHENGASTROY; a.k.a. PECHENGASTROI OOO), Ter. Promploshchadka Kgmk, Monchegorsk, Murmansk region 184507, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5107916719 (Russia); Registration Number 1165190055007 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

29. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VOSTOKGEOLOGIYA (a.k.a. LIMITED LIABILITY COMPANY VOSTOKGEOLOGIA), d. 35B Str. 9, ul. Traktovaya, Chita, Zabaykalskiy kray 672014, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7536076678 (Russia); Registration Number 1067536053485

(Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

30. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU ZAPOLYARNAYA STROITELNAYA KOMPANIYA (a.k.a. LIMITED LIABILITY COMPANY POLAR CONSTRUCTION COMPANY; a.k.a. LIMITED LIABILITY ZAPOLARNAYA CONSTRUCTION COMPANY; a.k.a. ZAPOLYARNAYA STROITELNAYA KOMPANIYA; a.k.a. "ZSK OOO"), Ul. Betonnyaya D. 13A, Pomesheh. I/Floor 2, Staraya Kupavna 142450, Russia; 8, ul. Taimyrskaya, Norilsk, Krasnoyarsk region 663330, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 2457061775 (Russia); Registration Number 1062457022880 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the construction sector of the Russian Federation economy.

31. SERENITY CYBER SECURITY LIMITED LIABILITY COMPANY (a.k.a. SERENITY CYBER SECURITY LLC; a.k.a. "MTS RED"), d. 5 str. 2 pom. XII (ETAZH 5) kom. 20, ul. Vorontsovskaya, Moscow 109147, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9709084286 (Russia); Registration Number 1227700479753 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

32. FAGIMA FRESATRICI SPA (a.k.a. FAGIMA SPA), Via Burri 16, Pontenuovo, Barberino di Mugello 50028, Italy; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Jul 1986; Tax ID No. 03789270489 (Italy); Registration Number FI0389277 (Italy) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

33. PALOMA PRECIOUS DMCC, 1 Lake Plaza, Jumeirah Lakes Towers, Dubai, United Arab Emirates; Au-01-I02, Gold Tower, Jumeirah Lakes Towers, Dubai 65005, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 28 May 2018; License 480508 (United Arab Emirates); Legal Entity Number 213800R31DVGUYXLTE77 (United Arab Emirates); Registration Number 125266 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

34. TRIO JEWELLS LLC, Maryam 1, Plot No. 735, Office No. 304, Dubai, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 09 Sep 2021; Tax ID No.

100500504400003 (United Arab Emirates); Chamber of Commerce Number 371905 (United Arab Emirates); Registration Number 981350 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

35. ELPROM LIMITED LIABILITY COMPANY (a.k.a. ELPROM LLC), Ul. Pulkovskaya, D. 2, K. 1, Lit. A, Pom. 69-N, Saint Petersburg 196142, Russia; Marshala Govorova Str. 40, Lit. A, Office 34, Saint Petersburg 198095, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7805592546 (Russia); Registration Number 1127847332007 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

36. JOINT STOCK COMPANY AEROCON (a.k.a. AO AEROKON), Ul. Zhukovskogo, D. 1, Zhukovskiy 140180, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5013026848 (Russia); Registration Number 1025001627749 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

37. JOINT STOCK COMPANY AKMETRON (a.k.a. AO AKMETRON), Ul. Rabochaya, D. 93, Str. 2, Podyezd 2, 2 Et, Moscow 109544, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7723827170 (Russia); Registration Number 1127746079120 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

38. KUGEL LIMITED LIABILITY COMPANY, Ul. Zapadnaya (Tekhnopark Promzona), Vladenie 16, Office 2, Rp. Gorki Leninskie, Vidnoe 142712, Russia; 4, Naberezhnaya Str., Senitsa Settlement, Minsk 223056, Belarus; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7721742033 (Russia); Registration Number 1117746935800 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

39. LIMITED LIABILITY COMPANY HEAD POINT (a.k.a. LLC HEAD POINT), Ul. Bolshaya Pochtovaya, D. 26, Str. 1, Et/Pom/Kom/Of. 6/I/2B/1, Moscow 105082, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7704503123 (Russia); Registration Number 1037739904707 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

40. LIMITED LIABILITY COMPANY KB RUS, Ul. Platonova, D. 4, Chast Pomescheniya II, Office 302, Voronezh 394018, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3664239120 (Russia); Registration Number 1183668045615 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

41. LIMITED LIABILITY COMPANY PT ELEKTRONIK (a.k.a. "PT ELECTRONIC"; a.k.a. "PT ELECTRONICS"), Ul. Ivana Fomina, D. 6, Lit. B, Pom. 337, Saint Petersburg 194295, Russia; Dor. V Kamenku, D. 64, K. 2, Str. 1, Pom. 1-N, 2-N, Saint Petersburg 197350, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7802606871 (Russia); Registration Number 1167847490524 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

42. LIMITED LIABILITY COMPANY URALDRONZAVOD, PR-KT Akademika Sakharova, D. 41, KV. 118, Yekaterinburg 620105, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6671284030 (Russia); Registration Number 1236600057011 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

43. LIMITED LIABILITY COMPANY VEKTOR IKS (a.k.a. "VECTORX"), Ter. Innovatsionnogo Tsentra Skolkovo, B-R Bolshoi, D. 42, Str. 1, Floor 3, Pom. 1014, Moscow 121205, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7731342796 (Russia); Registration Number 1177746035389 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

44. PALITRUMLAB LIMITED LIABILITY COMPANY (a.k.a. PALITRUMLAB LLC; a.k.a. "BRAND ANALYTICS"), Ul. Nobelya Skolkovo Innovatsionnogo Tsentra, Ter D. 7, Pom. 47, Moscow 121205, Russia; 10 Bolshaya Sadovaya St., Moscow, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7727796050 (Russia); Registration Number 1137746018156 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

45. PROTEH CO LTD (a.k.a. PROTEKH; a.k.a. "PROTECH LLC"), Ul. Tarusskaya, D. 10, Office 207, Moscow 117588, Russia; Dor Mkad 38 KM, D. 4, Moscow 117574, Russia; Ul. Ivana Chernykh 31-33, Office 510, Aquamarine Business Center, Saint Petersburg 198095, Russia; Secondary sanctions risk: See Section

11 of Executive Order 14024.; Tax ID No. 7701748975 (Russia); Registration Number 1077761186381 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

46. RADIOLINE LTD (a.k.a. LLC RADIOLINE; a.k.a. RADIOLAIN), PR-KT Volgogradskii, D. 42, K. 5, Floor 2, Pom. I, Kom. 1, Moscow 109316, Russia; Ul. Khimikov 28, BC H2O, Office 1207, Saint Petersburg 195030, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7718837905 (Russia); Registration Number 1117746143228 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

47. SCIENTIFIC RESEARCH CENTER RESONANCE JOINT STOCK COMPANY (a.k.a. AO NITS REZONANS; a.k.a. AO SRC REZONANS), Ul. 1-YA Bukhvostova, D. 12/11, K. 20, Moscow 107076, Russia; Ul. Korolenko, D. 3A, Floor 3, Pom. 3B, Moscow 107076, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7718016419 (Russia); Registration Number 1027700096984 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

48. CLOUDRUN LLC (a.k.a. CLOUDRUN LIMITED LIABILITY COMPANY; a.k.a. LIMITED LIABILITY COMPANY KLAUDRAN), d. 28 litera D ofis 33Zh, Prospekt Polyustrovski, Saint Petersburg 195197, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Aug 2021; Tax ID No. 7804685734 (Russia); Business Registration Number 1217800124508 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

49. DIDZHITAL KOMPLAENS, OOO (a.k.a. "DIGITAL COMPLIANCE"), Ul. Krasnogo Kursanta D. 25, Lit. Zh., Pomeshech. 186, Saint Petersburg 197198, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 25 May 2015; Tax ID No. 7802524178 (Russia); Business Registration Number 1157847182217 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

50. DIDZHITAL SEKYURITI SERVISIS, OOO (a.k.a. "DIGITAL SECURITY SERVICES"), Ul. Krasnogo Kursanta D. 25, Lit Zh, Pomeshech 174, Saint Petersburg 197198, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 10 Mar 2006; Tax ID No. 7802348564 (Russia); Business Registration Number 1067847503811 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

51. KIBER SERVIS, OOO (a.k.a. KIBER SERVICE), Ul. Bolshaya Dekabrskaya D. 13, Pomeshech, I Kom 5b, Moscow 123022, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 14 Aug 2018; Tax ID No. 7725496205 (Russia); Business Registration Number 1187746748507 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

52. MACHINE LEARNING LAB S.R.O., Opletalova 1015/55, Prague 11000, Czech Republic; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 17 Dec 2015; Trade License No. 04653670 (Czech Republic) [RUSSIA-EO14024] (Linked To: KLIMINA, Yevgeniya).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, KLIMINA, Yevgeniya, a person whose property and interests in property are blocked pursuant to E.O. 14024.

53. OOO SOFT PLYUS (a.k.a. OOO HEXWAY), Ul. Vatutina D. 19, Lit. A, Pomeshech. 17-N, Office 612, Saint Petersburg 195009, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 24 Sep 2021; Tax ID No. 7804686897 (Russia); Business Registration Number 1217800147740 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

54. ATOL, Ul. Bolshaya Novomitrovskaya D. 14, Str. 2, ET. 4, Moscow 127015, Russia; Ul. Godovikova D. 9, Str. 17, Floor 4, Pomeshech 5, Moscow 129085, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Type: Computer programming activities; Tax ID No. 5010051677 (Russia); Registration Number 1165010050590 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

55. CENTRE OF FINANCIAL TECHNOLOGIES GROUP (a.k.a. ZAO TSFT), Ul. Shaturskaya D. 2, Novosibirsk 630055, Russia; Ul. Tekhnoparkovaya Str. 1, Office 208, Koltsovo 630559, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5407125059 (Russia); Registration Number 1025403199689 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

56. DIASOFT LTD, Ul. Polkovaya D. 3 Str. 14, Moscow 127018, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7715560268 (Russia); Registration Number 1057746642436 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

57. IDRONAUT S.R.L., Via Monte Amiata 10, Brugherio 20861, Italy; Website www.idronaut.it; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Dec 2000; Tax ID No. 13292880153 (Italy); Registration Number MB1635423 (Italy) [RUSSIA-EO14024] (Linked To: TECHNOPOLE COMPANY; Linked To: P.P. SHIRSHOV INSTITUTE OF OCEANOLOGY OF THE RUSSIAN ACADEMY OF SCIENCES).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of TECHNOPOLE COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of P.P. SHIRSHOV INSTITUTE OF OCEANOLOGY OF THE RUSSIAN ACADEMY OF SCIENCES, a person whose property and interests in property are blocked pursuant to E.O. 14024.

58. SHANGHAI OCEANEN ENVIRONMENTAL SCIENCE AND TECHNOLOGY CO., LTD. (Chinese Simplified: 上海海奕环境科技有限公司) (a.k.a. OCEANEN ENVIRONMENTAL SCI.& TECH.; a.k.a. SHANGHAI HAIYI ENVIRONMENTAL TECHNOLOGY CO., LTD.; a.k.a. SHANGHAI OCEANEN ENVIRONMENTAL SCI. & TECH), Longhu Lakeside Business Center, Room 204 Building 16, Songjiang, Shanghai, China; Ding Yuan Lu 618Nong 1Hao 29Chuang 135Shi, Shanghai 201600, China; Website www.oceanen-tech.com; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 11 Apr 2013; Organization Type: Wholesale of electronic and telecommunications equipment and parts; Registration Number 310118002833250 (China); Unified Social Credit Code (USCC) 9131011806599048X5 (China) [RUSSIA-EO14024] (Linked To: TECHNOPOLE COMPANY).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of TECHNOPOLE COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 14024.

59. TECHNOMAR (a.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU TEKHNOMAR; a.k.a. OOO TEKHNOMAR; a.k.a. OOO TEXHOMAP; a.k.a. TEHNOMAR), 12 Aviamotornaya Street, Moscow, Russia; 29 Entuziastov Highway, Floor 11, Moscow, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 24

Mar 2016; Organization Type: Wholesale of other machinery and equipment; Tax ID No. 7733276404 (Russia); Registration Number 1167746298653 (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.

60. BRIGHT UNIVERSE INTERNATIONAL LIMITED, Flat/RM A 12/F ZJ 300, 300 Lockhart Road, Wan Chai, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 17 Mar 2023; Company Number 3249139 (Hong Kong); Business Registration Number 75015779 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

61. SHAMS GOLD TRADING FZE, P6 Elob Office No., Hamriyah Free Zone, Sharjah, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 13 Sep 2021; License 19580 (United Arab Emirates); Registration Number 11757752 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

62. SWISS LUXURY FZE, Fujairah Freezone 2, Port Road Freezone 2, Fujairah Freezone, Al Fujayrah 50904, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 29 Mar 2012; License 2981A (United Arab Emirates); Legal Entity Number 254900SUTB0LEZ3DP246; Registration Number 11676406 (United Arab Emirates) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

63. UNIVERSAL GOLD HONG KONG LIMITED, New Territories, Tsing Yi, Hong Kong, China; Flat E, 11/F, Block 3, Mount Haven, 3 Liu To Road, Tsing Yi, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 29 Jun 2022; Company Number 3166971 (Hong Kong); Business Registration Number 74187278 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

64. AUDAX TRUST CONSULTING ESTABLISHMENT, Austrasse 14, Tricsen 94945, Liechtenstein; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 05 May 2008; Legal Entity Number 254900KFJSAFNKNG2X74; Registration Number FL-0002.286.806-1 (Liechtenstein) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the trust and corporate formation services sector of the Russian Federation economy.

65. LMG LIGHTHOUSE TRUST REG, Austrasse 14, P.O. Box 254, Triesen 9495, Liechtenstein; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 02 Nov 2009; Legal Entity Number 529900V5BDH8G1KWHI29; Registration Number FL-0002.332.190-4 (Liechtenstein) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in in the trust and corporate formation services sector of the Russian Federation economy.

66. ONE ASSET MANAGEMENT AG, Austrasse 14, Triesen 9495, Liechtenstein; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 Oct 2016; Legal Entity Number 5299009TMR68KP3H7610; Registration Number FL-0002.531.690-1 (Liechtenstein) [RUSSIA-EO14024] (Linked To: WYSS, Anton Daniel; Linked To: LINS, Alexander Franz Josef).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, WYSS, Anton Daniel, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, LINS, Alexander Franz Josef, a person whose property and interests in property are blocked pursuant to E.O. 14024.

67. AKTSIONERNOE OBSHCHESTVO KORPORATSIYA GALAKTIKA (a.k.a. AO KORPORATSIYA GALAKTIKA; a.k.a. GALACTICA CORPORATION; a.k.a. "GALAXY CORPORATION"), Alleya Teatralnaya, D. 3, Str. 1, Moscow 125167, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7707140573 (Russia); Registration Number 1027739341520 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

68. FEDERAL STATE BUDGETARY INSTITUTION TECHNOLOGICAL INSTITUTION FOR SUPERHARD AND NOVEL CARBON MATERIALS (a.k.a. FGBNU TISNUM; a.k.a. FSBI TISNCM; a.k.a. INSTITUTE OF TECHNOLOGY OF ULTRA HARD AND NEW CARBON MATERIALS), Ul. Tsentralnaya, D. 7A, Troitsk 108840, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5046054720 (Russia); Registration Number 1025006036439 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

69. KRIBRUM JSC (a.k.a. AO KRIBRUM), Ul. Vereiskaya, D. 29, Str. 134, Pom. 2N/7, Moscow 121357, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7731661104 (Russia); Registration Number 1107746952433 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

70. LIMITED LIABILITY COMPANY AMITRON ELEKTRONIKS (a.k.a. AMITRON ELECTRONICS LLC), Ul. Kulakova, D. 20, Str. 1-A, Office 608, Moscow 123592, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7734240231 (Russia); Registration Number 1027739858145 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

71. LIMITED LIABILITY COMPANY DRONOPORT (a.k.a. HIVE AUTONOMOUS DRONE SOLUTIONS), Ul. Rabochaya, D. 93, Str. 2, Moscow 109544, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7734436065 (Russia); Registration Number 1207700279808 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

72. LIMITED LIABILITY COMPANY EKSIKYUSHN ER DI SI (a.k.a. EKSIKYUSHN RDC; a.k.a. "EXECUTION COMPANY"), Ul. Yaroslavskaya, D. 8, K. 5, Moscow 129164, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7717783213 (Russia); Registration Number 1147746462368 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

73. LIMITED LIABILITY COMPANY INTEM LAB (a.k.a. INTHEME LAB), Ul. Nizhnyaya Krasnoselskaya, D. 40/12, K. 20, Office 710, Moscow 105066, Russia; Moskovsky Prospekt 38, Building 4, Cheboksary, Russia; 5/7 Sormovskaya St., Krasnodar 350018, Russia; 9 Deryabin Ave., Izhevsk 426054, Russia; 20 A. Ahmad Donish str., Yunusabad River, Tashkent 100180, Uzbekistan; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7702445613 (Russia); Registration Number 1187746873390 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

74. LIMITED LIABILITY COMPANY SIMBIRSKOE KONSTRUKTORSKOE BYURO PIRANYA (a.k.a. SIMBIRSK DESIGN BUREAU; a.k.a. SKB

PIRANHA; a.k.a. SKB PIRANYA), Ul. Gagarina, D. 7/15, Office 1, Ulyanovsk 432071, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7300024069 (Russia); Registration Number 1237300010430 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

75. LIMITED LIABILITY COMPANY UMYNI SKLAD (a.k.a. IQSKLAD; a.k.a. SMART WAREHOUSE GROUP OF COMPANIES - IQSKLAD), Elektrodnyaya St. 11/1, Moscow 111524, Russia; 22nd km, Kievskoe Highway, Rumyantseva Business Center, dv4s4ke, Entrance 21, 2nd Floor, Office 223, Moscow 108811, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7720575485 (Russia); Registration Number 1077746298630 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

76. NAUCHNO PROIZVODSTVENNOE OBYEDINENIE GRAN (a.k.a. GRAN SCIENTIFIC AND PRODUCTION ASSOCIATION; a.k.a. LIMITED LIABILITY COMPANY NAUCHNO PROIZVODSTVENNOE OBYEDINENIE GRAN; a.k.a. NPO GRAN; a.k.a. "LIMITED LIABILITY COMPANY GRAN"; a.k.a. "NPP GERAN"), PR-KT Lenina, D. 21V, Office 516/8, Chelyabinsk 454090, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7451461159 (Russia); Registration Number 1227400042264 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

77. NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE TOMILINSKII ELEKTRONNYI ZAVOD (a.k.a. LIMITED LIABILITY COMPANY SCIENTIFIC PRODUCTION CORPORATION TOMILINSKY ELECTRONICS FACTORY; a.k.a. LLC NPP TEZ; a.k.a. NPP TEZ; a.k.a. TOMILINSKY ELECTRONICS FACTORY), Ul. Garshina, D. 11, Tomolino 140070, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5027095560 (Russia); Registration Number 1035005022326 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

78. OPEN JOINT STOCK COMPANY MSTATOR (a.k.a. PC MSTATOR), Ul. Aleksandra Nevskogo, D. 10, Borovichi 174401, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5320002221 (Russia); Registration Number 1025300988085 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

79. SFERA JSC (a.k.a. AO SFERA), Ul. Elektrodnyaya, D. 10, BTS Impuls, Moscow 111524, Russia; Ul. Bolshaya Serpukhovskaya, D. 44, Office 33, Moscow 115093, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7705033512 (Russia); Registration Number 1027700400771 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

80. SPEECH TECHNOLOGY CENTER LIMITED (a.k.a. "TSRT"), Ul. Krasutskogo, D.4, Korp. 4, Saint Petersburg 196188, Russia; Nab. Vyborgskaya, D. 45, Lit. E, Pom. Office 1-N, 133, Saint Petersburg 194044, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7805093681 (Russia); Registration Number 1027810243295 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

81. STC INNOVATIONS LIMITED (a.k.a. TSRT INNOVATSII), Ul. Gelsingforsskaya, D. 3, K. 11, Lit. D, Pom. 195, Saint Petersburg 194004, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7839438486 (Russia); Registration Number 1117847035547 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

82. STC SOFT LIMITED (a.k.a. TSRT SOFT), Nab. Vyborgskaya, D. 45, Lit. E, Pom. 1-N, 2-N, 4-N, Chast Ofisa 12, Saint Petersburg 194044, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7839441224 (Russia); Registration Number 1117847107674 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

83. ZAO SVETLANA EP (a.k.a. AO SVETLANA ELEKTRONPRIBOR; a.k.a. SVETLANA ELECTRONPRIBOR), PR-KT Engelsa, D. 27, Saint Petersburg 194156, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7802070277 (Russia); Registration Number 1027801543241 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

84. DALKOS CO LTD, Proezd 2-1 Yuzhnoportovyi d. 20A, str. 4, pod 1 et 1 kom 12, Moscow 115088, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7729579004 (Russia); Registration Number 1077757840522 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

85. SPE OU, Laki Tn 16, Tallinn 10621, Estonia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 22 May 2017; V.A.T. Number EE101978060 (Estonia); Tax ID No. 14263832 (Estonia) [RUSSIA-EO14024] (Linked To: PUSHKOV, Aleksandr Aleksandrovich; Linked To: KALINOV, Konstantin Svyatoslavovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, PUSHKOV, Aleksandr Aleksandrovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, KALINOV, Konstantin Svyatoslavovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

86. TAHA SAVUNMA SANAYI VE TICARET ANONIM SIRKETI, Icerenkoy Mah. Kucukbakkalkoy Yolu Cad. Cemre Apt No: 33, D. 1, Atasehir, Istanbul 34752, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 28 Sep 2018; Organization Type: Defense activities [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.

87. ACE ERA CO LIMITED, Unit 83 3/F Yau Lee Center No. 45 Hoi Yuen Road, Kwun Tong Kl, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 25 Aug 2020; Company Number 2971193 (Hong Kong); Business Registration Number 72163666 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

88. ASIA MATERIAL SOLUTIONS COMPANY LIMITED, Rm 1207A, 12/F Officeplus at Prince Edward, Mongkok, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 14 Jun 2017; Business Registration Number 67853509 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

89. FEPOOD ELECTRONICS HK CO LIMITED, Room 8, 11/F, Wang Fai Industrial Building, 29 Luk Hop Street, San Po Kong, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Nov 2014; Company Number 2167446 (Hong

Kong); Business Registration Number 64053322 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

90. FEVA DIS TICARET LIMITED SIRKETI (a.k.a. FEVA GROUP FOREIGN TRADE LIMITED COMPANY), No: 4/1-59 Tahtakale Mahallesi, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 13 Apr 2022; Tax ID No. 3851781062 (Turkey); Business Registration Number 374312 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

91. HIDROPARK HIDROLIK PNOMATIK SAN VE TIC LTD STI, Mescit Mah. Ataturk Cad. Birmes San Sit B 10 Blok No. 12, Istanbul 34956, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Dec 2009; Business Registration Number 718052 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the manufacturing sector of the Russian Federation economy.

92. HK CINTY CO LIMITED, Room 2, 3/F, Ruby Commercial Building, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 Jul 2022; Company Number 3169599 (Hong Kong); Business Registration Number 74213720 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

93. LL ELECTRONIC LIMITED, Blok A, Hillier Comm Building 15/F, Bonham Strand East 65-67, Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 21 Aug 2013; Company Number 1955667 (Hong Kong); Business Registration Number 61920752 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

94. WHITESTONE BILISM TIC VE SANAYI LTD STI, 25/2 Sekerhane Mahallesi Tevfikiye Cadde, Alanya, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 03 Oct 2023; Registration Number 811149468700001 (Turkey); alt. Registration Number 8111494687 (Turkey) [RUSSIA-EO14024] (Linked To: PETROV, Evgenii Stanislavich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, PETROV, Evgenii Stanislavich, a person whose property and interests in property are blocked

pursuant to E.O. 14024.

95. AERIALIA, 15 Etangs De Diane, Garennes-Sur-Eure 27780, France; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Jan 2024; Tax ID No. 983544560 (France) [RUSSIA-EO14024] (Linked To: REUTOV, Igor Aleksandrovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, REUTOV, Igor Aleksandrovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

96. ASPECTRIYM LIMITED TRADE DEVELOPMENT (a.k.a. OBSHCHESTVO S ORGANICHENNOY OTVETSTVENNOSTYU ASPEKTRIUM), Ul. Svyazistov D. 9, Office 4, Krasnoznamensk 143090, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5006015193 (Russia); Registration Number 1165032058674 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

97. CONFIENZA GIDA PAZARLAMA VE TICARET ANONIM SIRKETI, No:10 Bebek Mahallesi, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 17 Dec 2021; Tax ID No. 2111339288 (Turkey); Business Registration Number 346597 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

98. ENUTEK MAKINA SANAYI VE TICARET LIMITED SIRKETI, C-32 Blok, No: 15-24, Kocatepe Mahallesi, Istanbul, Turkey; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 15 Dec 2022; Tax ID No. 3361229712 (Turkey); Business Registration Number 429096 (Turkey) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

99. FREE SKY SOLUTIONS OU, Vaike-Paala Tn 2, Tallinn 11415, Estonia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 14 Jun 2021; Tax ID No. 16251299 (Estonia); Business Registration Number EE102381957 (Estonia) [RUSSIA-EO14024] (Linked To: REUTOV, Igor Aleksandrovich).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, REUTOV, Igor Aleksandrovich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

100. GRUN GROUP CO LIMITED, Room D06, Flat A, 10th Floor, Tai King Industrial Building, No: 100-102 King Fuk Street, Sanpokong, Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 03 Sep 2021; Business Registration Number 73330907 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

101. HONG KONG YAYANG TRADING LIMITED (a.k.a. HONGKONG YAYANG TRADING LTD), Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 24 Sep 2021; Company Number 73393791 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

102. INDUSTRIAL TECHNOLOGIES GROUP FRANCE (a.k.a. "ITGF"), 2 Rue Charlie Chaplin, Bois-D'arcy 78390, France; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 06 Mar 2015; Tax ID No. 810727040 (France) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

103. INTERASIA TRADING GROUP LIMITED, Room 4, 16/F Ho King COMM Ctr, 2-16 Fayuen St, Mongkok Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 26 Jan 2017; Business Registration Number 62709087 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

104. KIRA INTERNATIONAL TRADE CO LIMITED, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Jul 2018; Company Number 2721404 (Hong Kong); Business Registration Number 69628930 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

105. MOST DEVELOPMENT LIMITED, Rm 4, 16/F, Ho King Comm Ctr, 2-16 Fayuen St, Mongkok Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 15 May 2018; Business Registration Number 69362621 [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

106. NEW WALLY TARGET INTERNATIONAL TRADE CO LIMITED, Flat/Rm B3 19/F, Tung Lee Commercial Building 91-97 Jervois Street, Sheung Wan, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 04 Jul 2018; Business Registration Number 69586803 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

107. AKTSIONERNOE OBSHCHESTVO EVRAZ KACHKANARSKI GORNO OBOGATITELNY KOMBINAT (a.k.a. JOINT STOCK COMPANY EVRAZ KACHKANARCKY ORE MINING AND PROCESSING PLANT; a.k.a. "EVRAZ KGOK AO"), d. 2, ul. Sverdlova, Kachkanar, Sverdlovsk region 624351, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6615001962 (Russia); Registration Number 1026601125308 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

108. AKTSIONERNOE OBSHCHESTVO EVRAZ NIZHNETAGILSKI METALLURGICHESKI KOMBINAT (a.k.a. JOINT STOCK COMPANY EVRAZ NIZHNY TAGIL METALLURGICAL PLANT; a.k.a. "EVRAZ NTMK AO"), d.1, ul. Metallurgov, Nizhni Tagil, Sverdlovsk region 622025, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 31 Dec 1992; Tax ID No. 6623000680 (Russia); Registration Number 1026601367539 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

109. AKTSIONERNOE OBSHCHESTVO EVRAZ OBEDINENNY ZAPADNO SIBIRSKI METALLURGICHESKI KOMBINAT (a.k.a. JOINT STOCK COMPANY EVRAZ CONSOLIDATED WEST SIBERIAN METALLURGICAL PLANT; a.k.a. "EVRAZ ZSMK AO"), d.16, shosse Kosmicheskoe (Zavodskoi R-N), Novokuznetsk, Kemerovo region 654043, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4218000951 (Russia); Registration Number 1024201670020 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

110. AKTSIONERNOE OBSHCHESTVO EVRAZ VANADI TULA (a.k.a. EVRAZ VANADI TULA AO; a.k.a. EVRAZ VANADII TULA; a.k.a. JOINT STOCK COMPANY EVRAZ VANADY TULA), d.1, ul. Przhhevalskogo, Tula, Tula region 300016, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7105008754 (Russia); Registration Number 1027100507103 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the metals and mining sector of the Russian Federation economy.

111. AKTSIONERNOE OBSHCHESTVO OBYEDINENNAYA UGOLNAYA KOMPANIYA YUZHCUZBASSUGOL (a.k.a. AO OUK IYUZHCUZBASSUGOL; a.k.a. OUK YUZHCUZBASSUGOL AO; a.k.a. "AO OUK YKU"), PR-KT Kurako D. 33, Novokuznetsk 654006, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4216008176 (Russia); Registration Number 1024201758030 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

112. AO EVRAZ MARKET (f.k.a. EVRAZ METALL INPROM OAO), 9, ul. Khimicheskaya, Taganrog, Rostov region 347913, Russia; Ul. Belovezhskaya D. 4, Korp. V, Moscow 121353, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6154062128 (Russia); Registration Number 1026102571505 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

113. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU EVRAZKHOLDING FINANS (a.k.a. EVRAZKHOLDING FINANCE; a.k.a. EVRAZKHOLDING FINANS OOO), d. 1 ofis 302, ul. Rudokoprovaya R-n Tsentralny, Novokuznetsk, Kemerovo region 654027, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7707710865 (Russia); Registration Number 1097746549515 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

114. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU RASPADSKAYA UGOLNAYA KOMPANIYA (a.k.a. LIMITED LIABILITY COMPANY RASPADSKAYA COAL COMPANY; a.k.a. OOO RASPADSKAYA COAL COMPANY; a.k.a. RASPADSKAYA UGOLNAYA KOMPANIYA; a.k.a. "RUK OOO"), d. 33, Ofis 201, Prospekt Kurako (Kuibyshevski R-N), Novokuznetsk, Kemerovo region 654006, Russia; PR. Kurako D. 33, Novokuznetsk 654027, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4253029657 (Russia); Registration Number 1154253003750 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

115. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SHAKHTA ALARDINSKAYA (a.k.a. OOO ALARDINSKAYA MINE; a.k.a. OOO SHAKHTA ALARDINSKAIA; a.k.a. SHAKHTA ALARDINSKAYA OOO), Ul. Ugolnaya D. 56, Kaltan 652831, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4222013689 (Russia);

Registration Number 1114222001200 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

116. OSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SHAKHTA ESAULSKAYA (a.k.a. OOO ESAULSKAYA MINE; a.k.a. OOO SHAKHTA ESAULSKAYA; a.k.a. SHAKHTA ESAULSKAYA OOO), PR-KT Kurako, Tsentralnyi District D. 33, Novokuznetsk 654006, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4253000827 (Russia); Registration Number 1114253001807 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

117. PUBLICHNOE AKTSIONERNOE OSHCHESTVO RASPADSKAYA (a.k.a. OPEN JOINT STOCK COMPANY RASPADSKAYA; a.k.a. "RASPADSKAYA PAO"; a.k.a. "RASPADSKAYA PJSC"), 27A, prospekt Kommunisticheskii, Mezhdurechensk, Kemerovo region 652870, Russia; 106 Mira Street, Mezhdurechensk 652870, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4214002316 (Russia); Registration Number 1024201389772 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the metals and mining sector of the Russian Federation economy.

118. JOINT STOCK COMPANY KT - UNMANNED SYSTEMS (a.k.a. AO KT-UNMANNED SYSTEMS; a.k.a. "AO KRONSHADT-UNMANNED SYSTEMS"; a.k.a. "AO KT - BESPILOTNYE SISTEMY"; a.k.a. "AO KT-BS"; a.k.a. "KT - UNMANNED SYSTEMS"), PR-KT Malyi V.O. D.54, K.5 Lit. P, Saint Petersburg 199178, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Apr 2012; Tax ID No. 7801572080 (Russia); Registration Number 1127847213361 (Russia) [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.

119. LLC SEMICOR, d. 13 str. 43 pom., 2/1, ul. 2-Ya Zvenigorodskaya, Moscow 123022, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 23 Jun 2023; Tax ID No. 9701252482 (Russia); Government Gazette Number 54329073 (Russia); Business Registration Number 1237700430505 (Russia) [RUSSIA-EO14024] (Linked To: LLC LASER COMPONENTS).

Designated pursuant to section 1(a)(vi)(B) of E.O. 14024 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of LLC LASER COMPONENTS, a person

whose property and interests in property are blocked pursuant to E.O. 14024.

120. PRIKLADNYE TEKHNologii (a.k.a. LIMITED LIABILITY COMPANY APPLIED TECHNOLOGIES), Ul. Staroderevskaya D. 11, K. 2 Lit. A, Office 310, Saint Petersburg 197374, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 21 Dec 2023; Tax ID No. 7814832339 (Russia); Registration Number 1237800145791 (Russia) [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.

121. TEKHEKSPERTIZA, AO (a.k.a. AKTSIONERNOE OBSHCHESTVO BYURO TEKHNICHESKOI EKSPERTIZY VNESHNEEKONOMICHESKIKH OPERATSI), d. 3 etazh 6 pom. II kom., 11, ul. Scherbakovskaya, Moscow 105318, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 25 Jan 2012; Tax ID No. 7719801450 (Russia); Government Gazette Number 38285778 (Russia); Business Registration Number 1127746032370 (Russia) [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.

122. AKTSIONERNOE OBSHCHESTVO DISPLEI KOMPONENT (a.k.a. "DISPLAY COMPONENT"), ul. Babushkina d. 7, floor 2, pomesch. 9, Smolensk 214031, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6731073742 (Russia); Registration Number 1096731002378 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

123. AKTSIONERNOE OBSHCHESTVO OPYTNOE KONSTRUKTORSKOE BYURO EKSITON, ul. Internatsionalnaya d. 34-A, Pavlovskiy posad 142500, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5035025460 (Russia); Registration Number 1045007101105 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

124. ALLCIIPS LIMITED, Unit 1205, 12/f, Siu Wai Industrial Centre, 29-33 Wing Hong Street, Lai Chi Kok, Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 26 Oct 2015; Company Number 2299557 (Hong Kong); Business Registration Number 65382152 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

125. ELEKTORADIOKOMPONENTY SEVERO ZAPAD, pr-kt Leninskii d. 140, lit. I, pomeshch. 202/A, Saint Petersburg 198216, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7805717611 (Russia); Registration Number 1177847371723 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

126. EXITON (a.k.a. EKSITON), ul. Babushkina d.7, Smolensk 214031, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6732194193 (Russia); Registration Number 1206700005423 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

127. HENGYE TECH LIMITED, Unit D19, 3/F Wong King Ind Bldg No 2, Tai Yau St, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Jan 2021; Company Number 3011963 (Hong Kong); Business Registration Number 72577108 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

128. KATOD, ul. Padunskaya, d. 3, Novosibirsk 630047, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5402535005 (Russia); Registration Number 1115476016700 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

129. LIMITED LIABILITY COMPANY EKSITON, ul. Chugunova d. 15A, office 19, kom. 1, Ramenskoye 140105, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5040179240 (Russia); Registration Number 1225000061043 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

130. LIMITED LIABILITY COMPANY KHAVERIM (a.k.a. CHAVERIM; a.k.a. LLC HAVERIM), nab. Oktyabrskaya d. 104, k. 1 lit. p, office 401, Saint Petersburg 193079, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7811753791 (Russia); Registration Number 1207800168520 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

131. LIMITED LIABILITY COMPANY MICROPRIBOR (a.k.a. "MICPB"), ul. Karla Marksa, d. 244, office 62, Izhevsk 426008, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1831205707 (Russia); Registration Number 1221800006581 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

132. LIMITED LIABILITY COMPANY VECTOR, ul. Tashkentskaya, d. 4, k. 2, lit. U, pomesch. 20-N, office 15, 16, Saint Petersburg 196006, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7805790530 (Russia); Registration Number 1227800033097 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

133. MATRIX METAL GROUP KORLATOLT FELELOSSEGU TARSASAG FELSZAMOLAS ALATT (a.k.a. MATRIX METAL GROUP KFTA), Koranyi Sandor Utca 4. 4., Budapest 1089, Hungary; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 20 Jan 2021; V.A.T. Number 2902663-2-42 (Hungary); Registration Number 01-09-379613 (Hungary) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

134. NORATEC HOLDINGS LTD, Foloune House, Flat No E2, Floor 5, Gladstonos & Filokyprou 120, Limassol 3032, Cyprus; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 07 Oct 2016; Registration Number C360954 (Cyprus) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

135. YLH ELECTRONICS HK CO LIMITED (a.k.a. YLH ELECTRONICS (H.K.) CO., LIMITED), Hong Kong, China; Room 13B, Seat A, Huaqiang Plaza, Huaqiang North Road No.1019, Futian District, Shenzhen, Guangdong 518028, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 30 Sep 2005; Company Number 0998741 (Hong Kong); Business Registration Number 36061795 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

136. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO NAUCHNO VNEDRENCHESKOE PREDPRIYATIE BOLID (a.k.a. CJSC NVP BOLID), ul. Pionerskaya d. 4, k. 11, pomesch. 205, Korolev 141070, Russia; Secondary

sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5018000402 (Russia); Registration Number 1035003350766 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

137. GREEN CHIP LIMITED LIABILITY COMPANY, ul. Butyrskii Val d. 68, pomeshech. 1/4, Moscow 127055, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9722017313 (Russia); Registration Number 1227700111451 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

138. HONGKONG CHIP LINE INTERNATIONAL CO, Rm 18 27/f Ho King Comm Ctr 2-16, Fa Yuen st, Mongkok, Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Apr 2012; Company Number 1726998 (Hong Kong); Business Registration Number 59625007 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

139. JINHUA HAIRUN POWER TECHNOLOGY CO LTD, No. 260 Chang'an Road, Jiangbin Industrial Zone, Tongqin Town, Wuyi County, Jinhua, Zhejiang Province 321200, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 28 Feb 2014; Company Number 330723000071657 (China); Unified Social Credit Code (USCC) 913307230927997015 (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

140. MAVERIKS, ul. Rabochaya d. 91, str. 2, pomeshech. 14, Moscow 109544, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 9709077659 (Russia); Registration Number 1227700038851 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

141. QINGDAO HEHUIXIN INTERNATIONAL TRADE CO LTD, No. 046, Floor 1, Building A, Floor No. 6 Office, No. 1, Luanhe Road, Shanghe Model Zone, Jiaozhou, Qingdao, Shandong 266000, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 21 Oct 2022; Unified Social Credit Code (USCC) 91370281MAC1EYTW5E (China) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

142. SHENZHEN ROYO TECHNOLOGY CO LIMITED, Rm 1307, Beverly Coml Ctr, Tsim Sha Tsui, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 27 Jul 2023; Business Registration Number 75558606 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

143. SNABINTER, sh. Volokolamskoe, d. 116, pomesch. 439, Moscow 125371, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7743254512 (Russia); Registration Number 1187746447745 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

144. XIN QUAN ELECTRONICS CO LIMITED (a.k.a. XIN QUAN ELECTRONICS HONGKONG CO LIMITED), Unit D 16/F, One Capital Place 18 Luard Rd, Wan Chai, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 05 Jan 2011; Company Number 1548836 (Hong Kong); Business Registration Number 53568083 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

145. INZHIINIRING GRUPP OOO (Cyrillic: ООО “ИНЖИНИРИНГ ГРУПП”) (a.k.a. OOO IZOVAK ENGINEERING (Cyrillic: ООО “ИЗОВАК ИНЖИНИРИНГ”); a.k.a. "LLC ENGINEERING GROUP"), Ul. Lva Tolstogo D. 5, Str. 2, Floor 4, Pomesch./Kom. 2/24 (V 416), Moscow 119021, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 16 Sep 2020; Tax ID No. 7708387990 (Russia); Government Gazette Number 45582270 (Russia); Registration Number 1207700340759 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

146. SMART KIT TECHNOLOGY LIMITED, Rm A 110 1/F Lee Ka Industrial Building San Po Kong Kowloon, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Jun 2020; Company Number 2951108 (Hong Kong); Business Registration Number 71958537 (Hong Kong) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

147. 9105 2829 QUEBEC INC, 18C-3107 av. des Hotels, Quebec, Quebec G1W4W5, Canada; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 12 Jun 2001; Enterprise Number 1160186467 (Canada) [RUSSIA-EO14024] (Linked To: ORLOFF, Alexandre).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ORLOFF, Alexandre, a person whose property and interests in property are blocked pursuant to E.O. 14024.

148. ALEXANDRE ORLOFF LTD, 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Mar 2019; Company Number 11887236 (United Kingdom) [RUSSIA-EO14024] (Linked To: ORLOFF, Alexandre).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ORLOFF, Alexandre, a person whose property and interests in property are blocked pursuant to E.O. 14024.

149. DIGITAL MARKETING AWARDS FZ LLC (a.k.a. SWISS DRAGONS MANAGEMENT DIGITAL MARKETING AWARDS; a.k.a. "SD DIGITAL MARKETING AWARDS"), Compass Building FDRK 2508, Al Shohada Road, Al Hamra Industrial Zone-FZ, Ras al Khaimah, United Arab Emirates; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 10 Jul 2023; License 17002525 (United Arab Emirates); Economic Register Number (CBLS) 12119212 (United Arab Emirates) [RUSSIA-EO14024] (Linked To: ORLOFF, Alexandre).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ORLOFF, Alexandre, a person whose property and interests in property are blocked pursuant to E.O. 14024.

150. DOUGONG TRADING HONG KONG LIMITED, 23/F, Tower 2, Enterprise Square Five, 38 Wang Chiu Road, Kowloon Bay, Hong Kong, China; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 13 Jun 2023; Company Number 3288412 (Hong Kong); Business Registration Number 75410353 (Hong Kong) [RUSSIA-EO14024] (Linked To: ORLOFF, Alexandre).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ORLOFF, Alexandre, a person whose property and interests in property are blocked pursuant to E.O. 14024.

151. SHANGHAI TECHINITAL MATERIALS CO LTD (a.k.a. SHANGHAI TECHINITAL MATERIALS CO), Room 2030A-B, No. 2012, Road Jiangning, Shanghai, China; No. 04-06, Building 3, XM Industrial Zone, Economy & Technology Development District, Guiyang City, Guizhou, China; Secondary

sanctions risk: See Section 11 of Executive Order 14024.; Organization Type: Wholesale of electronic and telecommunications equipment and parts [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

152. ZVIGENI TECHNOLOGICAL SYSTEMS LIMITED (a.k.a. SYSTEMES TECHNOLOGIQUES ZVIGENI; a.k.a. ZVIGENI TECHNOLOGY SYSTEMS), 38 Gloucester Road, 1101-4, Hong Kong, China; 23/F, Tower 2, Enterprise Square Five, 38 Wang Chiu Road, Kowloon Bay, Hong Kong, China; 18C-3107 av. des Hotels, Quebec, Quebec G1W4W5, Canada; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Company Number 2815744 (Hong Kong); Enterprise Number 1175952143 (Canada); Business Registration Number 70580521 (Hong Kong) [RUSSIA-EO14024] (Linked To: ORLOFF, Alexandre).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for having acted or purported to act for or on behalf of, directly or indirectly, ORLOFF, Alexandre, a person whose property and interests in property are blocked pursuant to E.O. 14024.

153. 46TH CENTRAL RESEARCH AND DEVELOPMENT INSTITUTE OF THE MINISTRY OF DEFENSE (a.k.a. 46TH CENTRAL RESEARCH INSTITUTE; a.k.a. 46TH TSNII; a.k.a. FEDERALNOE GOSUDARSTVENNOE BYUDZHETNOE UCHREZHDENIE 46 TSENTRALNYI NAUCHNO ISSLEDOVATELSKII INSTITUT MINISTERSTVA OBOBORY ROSSIISKOI FEDERATSII; a.k.a. FGBU 46 TSNII MINOBORONY ROSSII), PR Chukotskii, D. 8, Moscow 129327, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7716567668 (Russia); Registration Number 1077746005809 (Russia) [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.

154. FEDERAL STATE GOVERNMENTAL INSTITUTION 27 CENTRAL RESEARCH INSTITUTE OF THE MINISTRY OF DEFENSE OF THE RUSSIAN FEDERATION (a.k.a. FGBU 27 TSNII MINOBORONY ROSSII), PR-D 1-I Khoroshevskii D. 5, Moscow 125284, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7714676767 (Russia); Registration Number 1067761727505 (Russia) [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.

155. FEDERAL STATE GOVERNMENTAL INSTITUTION 4 CENTRAL RESEARCH INSTITUTE OF THE MINISTRY OF DEFENSE OF THE RUSSIAN FEDERATION (a.k.a. FGBU 4 TSNII MINOBORONY ROSSII; a.k.a. "4 TSNII"), Ul. M.K. Tikhonravova (Yubileinyi MKR) D. 29, Korolev 141091, Russia; Secondary sanctions risk: See Section 11 of Executive Order

14024.; Tax ID No. 5054086684 (Russia); Registration Number 1065018010386 (Russia) [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.

156. JOINT STOCK COMPANY SPECIAL DESIGN BUREAU OF THE RUSSIAN MINISTRY OF DEFENSE (a.k.a. AO SKB MO RF; a.k.a. FSUE 766 UPTK; a.k.a. OAO 766 UPTK; a.k.a. OPEN JOINT STOCK COMPANY 766 MANAGEMENT OF PRODUCTION AND TECHNOLOGICAL EQUIPMENT), Ul. Institutskaya, D. 1, RP. Nakhbino, Krasnogorsk 143432, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5024076350 (Russia); Registration Number 1065024000513 (Russia) [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.

157. AO NPP SAIT (a.k.a. "SAIT"), G Zelenograd, Proezd 4806 D 5, Str 20, Office M 05, Moscow 124498, Russia; Al. Solnechnaya D. 6, Pom/Komn XIII/14, Zelenograd 124527, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7735071466 (Russia); Registration Number 1037700225056 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

158. FGUP PO OKTYABR, Ul. Ryabova D. 8, Kamensk-Ural'skiy 623420, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 6612001971 (Russia); Registration Number 1026600932566 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

159. JOINT STOCK COMPANY 31 STATE DESIGN INSTITUTE FOR SPECIAL CONSTRUCTION (a.k.a. AO 31 GPISS), B-R Smolenskii D. 19, Str. 1, Moscow 119121, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7704730704 (Russia); Registration Number 1097746425370 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

160. OJSC VLADIMIR RADIO COMMUNICATIONS DESIGN BUREAU (a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO VLADIMIRSKOE KONSTRUKTORSKOE BYURO RADIOSVYAZI; a.k.a. "OAO VKBR"), Ul. Baturina D. 28, Vladimir 600017, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 3328412561 (Russia); Registration

Number 1023301456826 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

161. RESEARCH AND PRODUCTION ASSOCIATION LEPTON (a.k.a. AKTSIONERNOE OBSHCHESTVO NPO LEPTON; a.k.a. AO NPO LEPTON; a.k.a. RPA LEPTON), Al. Solnechnaya D. 6, Pomesch. 6 Komnata 5, Zelenograd 124527, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7735003138 (Russia); Registration Number 1037739124477 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

162. SCIENTIFIC AND PRODUCTION ASSOCIATION STATE INSTITUTE OF APPLIED OPTICS (a.k.a. AO NPO GIPO), Ul. Lipatova D. 2, Kazan 420075, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1660147185 (Russia); Registration Number 1101690067104 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

163. SCIENTIFIC PRODUCTION ASSOCIATION COMPUTING SYSTEMS (a.k.a. NAUCHNO PROIZVODSTVENNOE OBYEDINENIE VYCHISLITEL'NYKH SISTEM; a.k.a. "NPO VS"), Ul. Zhurnal'istov D. 30, Pom. 2, Kazan 420088, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 1660093042 (Russia); Registration Number 1061686077298 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

164. SCIENTIFIC RESEARCH INSTITUTE FOR OPTOELECTRONIC INSTRUMENT ENGINEERING (a.k.a. PUBLIC LIMITED COMPANY SCIENTIFIC RESEARCH INSTITUTE FOR OPTOELECTRONIC INSTRUMENT ENGINEERING; a.k.a. "AO NII OEP"), Ul. Leningradskaya D. 29, Lit. T, Sosnovyy Bor 188540, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 4725481940 (Russia); Registration Number 1124725000894 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

165. AKTSIONERNOE OBSHCHESTVO ZAVOD REKOND, ul. Kurchatova d.10, Saint Petersburg 194223, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7802005951 (Russia); Registration Number 1027801526070 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having

operated in the technology sector of the Russian Federation economy.

166. AUTONOMOUS NON PROFIT ORGANIZATION ARTIFICIAL INTELLIGENCE RESEARCH INSTITUTE (a.k.a. ANO AI RESEARCH INSTITUTE), Pr-kt Kutuzovskii d. 32, k. 1, Pomeshch. 4.V.08, Moscow 121170, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7730261209 (Russia); Registration Number 1207700493978 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

167. FEDERAL STATE INSTITUTION FEDERAL RESEARCH CENTER INFORMATICS AND MANAGEMENT OF THE RUSSIAN ACADEMY OF SCIENCES (a.k.a. FEDERAL RESEARCH CENTER COMPUTER SCIENCE AND CONTROL OF THE RUSSIAN ACADEMY OF SCIENCES; a.k.a. FITS IU RAN; a.k.a. FRC CSC RAS; a.k.a. FRC IU RAS; a.k.a. INSTITUTE OF INFORMATICS PROBLEMS OF RUSSIAN ACADEMY OF SCIENCES), ul. Vavilova, d. 44, k. 2, Moscow 119333, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise; Tax ID No. 7736051896 (Russia); Registration Number 1027739314030 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

168. RUSSIAN ARTIFICIAL INTELLIGENCE RESEARCH INSTITUTE OF THE RUSSIAN ACADEMY OF SCIENCES (a.k.a. "RAIRI"), 60th Anniversary Prospect, 9, Moscow 117312, Russia; Website <https://rairi.frccsc.ru>; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Target Type State-Owned Enterprise [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

169. LIMITED LIABILITY COMPANY TSIFRA (a.k.a. ZYFRA), PR-KT Leninskii, D. 15A, Moscow 119071, Russia; PR-KT Vernadskogo, D. 6, Pom. 28, Moscow 119311, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7704245507 (Russia); Registration Number 1027704005780 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

170. JOINT STOCK COMPANY RESEARCH AND PRODUCTION CENTER NII MICRODEVICES (a.k.a. AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNYI TSENTR NII MIKROPRIBOROV; a.k.a. AO NPTS NIIMP; a.k.a. JSC NPTS NIIMP), PR-KT Georgievskii D. 5, Str. 1, Kom. 63, Zelenograd 124498, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7735126901 (Russia); Registration Number 1037735024161 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

171. JOINT STOCK COMPANY RESEARCH INSTITUTE OF POLYMERIC MATERIAL (a.k.a. JSC SCIENTIFIC-RESEARCH INSTITUTE OF POLYMER MATERIALS; a.k.a. "AO NIIPM"), Ul. Chistopolskaya D. 16, Perm 614113, Russia; Ul. Galpernia D. 11, K. 3 Str. 50/2, Perm 614042, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 5908051070 (Russia); Registration Number 1125908001670 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

172. NAUCHNO ISSLEDOVATELSKAYA LABORATORIYA AEROKOSMICHESKOI TEKHNIKI DOSAAF (a.k.a. NILAKT DOSAAF), Ul. Barrikad D. 174, Office 311, Kaluga 248018, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 7733781710 (Russia); Registration Number 1117746842080 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the technology sector of the Russian Federation economy.

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.
[FR Doc. 2024–26668 Filed 11–14–24; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY
Office of Foreign Assets Control
Notice of OFAC Sanctions Action
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 removal of an entity currently on OFAC’s Sectoral Sanctions Identifications List (SSI List) based on OFAC’s determination that one or more applicable legal criteria were satisfied.
DATES: This action was issued on October 30, 2024. See SUPPLEMENTARY INFORMATION for relevant dates.
FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420 or <https://ofac.treasury.gov/contact-ofac>.
SUPPLEMENTARY INFORMATION:
Electronic Availability
The SSI List and additional information concerning OFAC sanctions

programs are available on OFAC’s website: <https://ofac.treasury.gov>.
Notice of OFAC Action
On October 30, 2024, OFAC removed from the SSI List the entity listed below, who was subject to the prohibitions of Directive 1 imposed pursuant to E.O. 13662.
Entity
1. PROMINVESTBANK (a.k.a. COMMERCIAL INDUSTRIAL AND INVESTMENT BANK PUBLIC JOINT STOCK COMPANY; a.k.a. JOINT STOCK COMMERCIAL INDUSTRIAL AND INVESTMENT BANK PUBLIC JOINT STOCK COMPANY; a.k.a. PSC PROMINVESTBANK; a.k.a. PUBLIC STOCK COMPANY JOINT STOCK COMMERCIAL INDUSTRIAL AND INVESTMENT BANK), 12, Shevchenko lane, Kyiv 01001, Ukraine; SWIFT/BIC UPIBUAUX; website pib.ua; Executive Order 13662 Directive Determination—Subject to Directive 1; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Organization Established Date 26 Aug 1992; Target Type Financial Institution; Registration Number 00039002 (Ukraine); All offices worldwide; for more information on directives, please visit the following link: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives>. [UKRAINE–EO13662] (Linked To: STATE CORPORATION BANK FOR

DEVELOPMENT AND FOREIGN ECONOMIC AFFAIRS VNESHECONOMBANK).
Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.
[FR Doc. 2024–26666 Filed 11–14–24; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY
Internal Revenue Service
Proposed Collection; Comment Request for Information Collection Tools Relating to the Orphan Drug Credit
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice and request for comments.
SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to the orphan drug credit.

DATES: Written comments should be received on or before January 14, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB control number 1545–1505 or Orphan Drug Credit, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.L.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 67.

Estimated Time per Response: 4 hours, 42 min.

Estimated Total Annual Burden Hours: 316 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2024.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2024–26669 Filed 11–14–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection Activity Under OMB Review: Claim for One Sum Payment Government Life Insurance, Claim for Monthly Payments Government Life Insurance, and Claim for One Sum Payment Government Life Insurance (DocuSign)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by December 16, 2024.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0060.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, (202)

461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: VA Form 29–4125, Claim for One Sum Payment—Government Life Insurance; VA Form 29–4125e (DocuSign) Claim for One Sum Payment—Government Life Insurance; VA Form 29–4125a, Claim for Monthly Payments—National Service Life Insurance.

OMB Control Number: 2900–0060
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by beneficiaries applying for proceeds of Government Life Insurance policies. The VA Form 29–4125e has been added to this collection. This is an electronic version of the 29–4125. This form was created so beneficiaries can apply for insurance proceeds electronically. This will not affect the number of respondents but will make it easier and reduce the time it takes for beneficiaries to receive their insurance proceeds. The information requested on the forms is required by law, 38 U.S.C. 1917 and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 73508, September 10, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 12,010 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120,100.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–26645 Filed 11–14–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Agency Information Collection Activity Under OMB Review: Application for VA Education Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0154.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for VA Education Benefits, VA Form 22–1990; Application for Family Member to use Transferred Benefits, VA Form 22–1990E; Application for VA Benefits under the National Call to Service Program, VA Form 22–1990N.

OMB Control Number: 2900–0154, <https://www.reginfo.gov/public/do/PRAsearch>.

Type of Review: Revision of a currently approved collection.

Abstract: Applicants complete and submit the Application for Education Benefits, VA Form 22–1990; National Call to Service (NCS), VA Form 22–1990N, or the Transfer of Entitlement (TOE), VA Form 22–1990E to file their claim for VA education benefits, which all have different eligibility requirements. The information requested on each of these forms helps

VA to determine the applicant’s eligibility to education benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 73192, September 9, 2024.

Affected Public: Individuals and Households.

Estimated Annual Burden: 36,458 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 145,834.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–26585 Filed 11–14–24; 8:45 am]

BILLING CODE 8320–01–P



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Part II

Department of the Treasury

Office of Investment Security

31 CFR Part 850

Provisions Pertaining to U.S. Investments in Certain National Security
Technologies and Products in Countries of Concern; Final Rule

DEPARTMENT OF THE TREASURY**Office of Investment Security****31 CFR Part 850**

RIN 1505–AC82

Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern**AGENCY:** Office of Investment Security, Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This final rule sets forth the regulations that implement Executive Order 14105 of August 9, 2023, “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern,” which declares a national emergency to address the threat to the United States posed by countries of concern that seek to develop and exploit sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities. The final rule requires United States persons to provide notification to the U.S. Department of the Treasury regarding certain transactions involving persons of a country of concern that are engaged in activities involving certain national security technologies and products that may contribute to the threat to the national security of the United States; and prohibits United States persons from engaging in certain other transactions involving persons of a country of concern that are engaged in activities involving certain other national security technologies and products that pose a particularly acute national security threat to the United States.

DATES: This final rule is effective on January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: OIS.Outbound.Regulations@treasury.gov.

SUPPLEMENTARY INFORMATION:**I. Background****A. Outbound Order**

On August 9, 2023, the President issued Executive Order 14105 (88 FR 54867), “Addressing United States Investments in Certain National

Security Technologies and Products in Countries of Concern” (the Outbound Order), pursuant to his authority under the Constitution and the laws of the United States, including the International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and section 301 of title 3, United States Code (U.S.C.). In the Outbound Order, the President found that the advancement by countries of concern in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes a threat to the national security of the United States, which has its source in whole or substantial part outside the United States, and that certain U.S. investments risk exacerbating this threat. In response, the President declared a national emergency to deal with this threat. On August 6, 2024, the President continued the national emergency (89 FR 65163) declared in the Outbound Order.

The Outbound Order identifies three sectors of national security technologies and products to be covered by the program: semiconductors and microelectronics, quantum information technologies, and artificial intelligence. As described in the Outbound Order, countries of concern are exploiting or have the ability to exploit certain U.S. outbound investments, including certain intangible benefits that often accompany U.S. investments and that help companies succeed. In an Annex to the Outbound Order, the President identified one country, the People’s Republic of China (PRC), along with the Special Administrative Region of Hong Kong (Hong Kong) and the Special Administrative Region of Macau (Macau), as a country of concern. The President may modify the Annex to the Outbound Order and update the list of countries of concern.

Advanced technologies and products that are increasingly developed and financed by the private sector form the basis of next-generation military, intelligence, surveillance, or cyber-enabled capabilities. As stated in the Outbound Order, advancements in sensitive technologies and products in the areas of semiconductors and microelectronics, quantum information technologies, and artificial intelligence will accelerate the development of advanced computational capabilities that will enable new applications that pose significant national security risks, such as the development of more sophisticated weapons systems, breaking of cryptographic codes, and other applications that could provide a

country of concern with military advantages. The potential military, intelligence, surveillance, or cyber-enabled applications of these technologies and products pose risks to U.S. national security, particularly when developed in or by a country of concern in which the government seeks to (1) direct entities to obtain technologies to achieve national security objectives and (2) compel public or private entities to share or transfer these technologies to the government’s military, intelligence, surveillance, or security apparatuses.

U.S. investments are often more valuable than their capital alone, because they can also include the transfer of intangible benefits. Intangible benefits that often accompany U.S. investments and help companies succeed include: enhanced standing and prominence, managerial assistance, access to investment and talent networks, market access, and enhanced access to additional financing. Certain investments by United States persons into a country of concern can be exploited to accelerate the development of sensitive technologies or products—including military, intelligence, surveillance, or cyber-enabled capabilities—in ways that negatively impact the national security of the United States. Such investments, therefore, risk exacerbating this threat to U.S. national security.

The Outbound Order outlines two primary components that serve distinct but related objectives with respect to the relevant technologies and products. The first component requires notification to the Secretary of the Treasury (the Secretary) regarding certain types of investments by a United States person in a *covered foreign person* engaged in *covered activities* pertaining to specified categories of technologies and products. The second component requires the Secretary to prohibit certain types of investment by a United States person in a *covered foreign person* engaged in *covered activities* pertaining to other specified categories of advanced technologies and products. Both components focus on investments that could enhance a country of concern’s military, intelligence, surveillance, or cyber-enabled capabilities through the advancement of technologies and products in particularly sensitive areas.

The Outbound Order directs the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, to issue, subject to public notice and comment, regulations that, among other things, require *U.S. persons* to submit information to the

U.S. Department of the Treasury (Treasury Department) regarding *notifiable transactions* and prohibit *U.S. persons* from engaging in *prohibited transactions*. Under section 10(a) of the Outbound Order, the President authorizes the Secretary to promulgate rules and regulations, including elaborating upon the definitions contained in the Outbound Order. The Secretary's promulgation of regulations under the Outbound Order is consistent with the President's authority to "issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise" of authorities granted under IEEPA (50 U.S.C. 1704) and the President's authority to designate and empower the head of any department or agency in the executive branch to perform any function which is vested in the President by law (3 U.S.C. 301).

The Outbound Order instructs the Secretary to identify in such regulations categories of *notifiable transactions* that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in the Outbound Order. The Outbound Order also instructs the Secretary to identify categories of *prohibited transactions* that involve technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines pose a particularly acute national security threat to the United States. Consistent with the Outbound Order, the Secretary may exempt from the notification requirement or prohibition any transaction determined by the Secretary, in consultation with the heads of relevant agencies, as appropriate, to be in the national interest of the United States. Additionally, the Outbound Order requires the Secretary to investigate, in consultation with the heads of relevant agencies, as appropriate, violations of the Outbound Order or the regulations and pursue civil penalties for such violations.

B. Advance Notice of Proposed Rulemaking

Concurrent with the issuance of the Outbound Order, on August 9, 2023, the Treasury Department issued an Advance Notice of Proposed Rulemaking, 88 FR 54961 (published August 14, 2023) (ANPRM), to provide transparency and clarity about the intended scope of the program and solicit early stakeholder

participation in the rulemaking process. The ANPRM outlined key concepts under consideration and sought public comment on a range of topics related to the implementation of the Outbound Order.

The Treasury Department received 60 comment letters in response to the ANPRM, many from business associations that represented a wide variety of stakeholders across industries as well as from individuals and companies in the financial services, legal, and technology sectors. (The comments to the ANPRM are available on the public rulemaking docket at <https://www.regulations.gov> (Docket TREAS-DO-2023-0009)). In general, the comments focused on enhancing the clarity of the scope of the program and the definitions under consideration, aligning the program where possible with other relevant U.S. Government programs, and supporting program development in a targeted manner to reduce unintended consequences for U.S. competitiveness. The Treasury Department considered each comment in developing the Notice of Proposed Rulemaking discussed in the next section.

C. Notice of Proposed Rulemaking

On June 21, 2024, the Treasury Department issued a Notice of Proposed Rulemaking, 89 FR 55846 (published July 5, 2024) (Proposed Rule), setting forth the full proposed regulations for implementing the Outbound Order. The Proposed Rule built on the ANPRM and reflected the Treasury Department's consideration of comments received in response to the ANPRM. The Proposed Rule included the full draft regulations and explanatory discussion regarding the intent of the proposal. It also solicited additional comments from the public.

Obligations on U.S. Persons

The Proposed Rule would have placed obligations on *U.S. persons*, including a notification requirement for certain transactions and prohibition of certain other transactions. A *U.S. person* was defined to include any United States citizen or lawful permanent resident, as well as any entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, and any person in the United States.

Knowledge Standard

The obligations of a *U.S. person* under the Proposed Rule would have applied if such person had knowledge of relevant facts or circumstances related

to a transaction. Under the proposed standard, a *U.S. person* may have been assessed to have had knowledge if the *U.S. person* possessed actual knowledge that a fact or circumstance existed or was substantially certain to occur, if the *U.S. person* possessed an awareness of a high probability of a fact or circumstance's existence or future occurrence, or if the *U.S. person* could have possessed such information through a "reasonable and diligent inquiry." To provide clarity, the Proposed Rule listed factors that the Treasury Department would consider in assessing whether a *U.S. person* undertook a "reasonable and diligent inquiry." Such factors reflected information that should have been ascertainable and/or contractual assurances that should have been obtainable through reasonable due diligence.

Specific Categories of Covered Transaction

The Proposed Rule would have applied to certain transactions by *U.S. persons*, including the acquisition of an equity interest or *contingent equity interest*; certain debt financing convertible to an equity interest or that afforded certain rights to the lender; the conversion of a *contingent equity interest*; a greenfield investment or other corporate expansion; a joint venture; and certain investments as a limited partner or equivalent (LP) in a non-*U.S. person* pooled investment fund.

Involving a Covered Foreign Person

The Proposed Rule would have applied to certain transactions by a *U.S. person* that also involved a *covered foreign person*—that is, a *person of a country of concern* engaged in a *covered activity* related to defined subsets of technologies and products or a *person* that had a specified relationship with such a person. Under the Proposed Rule, a *person of a country of concern* included an individual who is a citizen or permanent resident of a *country of concern* (and not a U.S. citizen or permanent resident of the United States); an entity organized under the laws of a *country of concern*, or headquartered in, incorporated in, or with a principal place of business in a *country of concern*; the government of a *country of concern*; or an entity that is directly or indirectly owned 50 percent or more by any persons in any of the aforementioned categories. Additionally, the Proposed Rule would have applied to certain transactions involving an entity that had a voting interest, board seat, or equity interest in a *covered foreign person* where more

than 50 percent of one of several key financial metrics of the entity was attributable to such *covered foreign person*.

Excepted Transaction

The Proposed Rule would have excepted certain types of transactions from coverage, provided that such transactions did not afford a *U.S. person* certain rights that were not standard minority shareholder protections. These included: investments in publicly traded securities, certain LP investments, buyouts of *country of concern* ownership; intracompany transactions; investments made pursuant to pre-Outbound Order binding commitments; certain syndicated debt financings; and certain transactions involving a person of a country or territory outside of the United States based on a determination by the Secretary.

National Interest Exemption

Under the Proposed Rule, a *U.S. person* could have sought an exemption from the application of the prohibition or notification requirement on the basis that a transaction was in the national interest of the United States.

Notification Requirement

A *U.S. person* subject to the notification requirement under the Proposed Rule would have been required to file a notification form with the Treasury Department that included information related to the transaction such as details about the *U.S. person*, the *covered transaction*, relevant national security technologies and products, and the *covered foreign person*. The Proposed Rule would have required that such notification be filed no later than 30 days after a transaction is completed or, where a *U.S. person* acquires actual knowledge after the completion date of a transaction that the transaction would have been a *covered transaction* if such knowledge had been possessed at the time of the transaction, no later than 30 days after the *U.S. person's* acquisition of such knowledge.

National Security Technologies and Products

The Proposed Rule identified the subsets of national security technologies and products identified in the Outbound Order that would have been subject to the Proposed Rule.

- *Semiconductors and microelectronics.* *Covered transactions* related to electronic design automation software; certain fabrication and advanced packaging tools; the design, fabrication, or packaging of certain

advanced integrated circuits; and supercomputers would have been prohibited. *Covered transactions* related to the design, fabrication, or packaging of integrated circuits not otherwise covered by the *prohibited transaction* definition would have been subject to the notification requirement.

- *Quantum information technologies.* *Covered transactions* related to the development of quantum computers and production of critical components; the development or production of certain quantum sensing platforms; and the development or production of quantum networking and quantum communication systems would have been prohibited.

- *Artificial intelligence (AI) systems.* *Covered transactions* related to the development of any *AI system* designed to be exclusively used for, or intended to be used for, certain end uses would have been prohibited. The Proposed Rule also included proposed alternatives for a prohibition on *covered transactions* related to the development of any *AI system* that was trained using a specified quantity of computing power, and trained using a specified quantity of computing power using primarily biological sequence data. *Covered transactions* related to the development of any *AI system* not otherwise covered by the *prohibited transaction* definition, where such *AI system* was designed or intended to be used for certain end uses or was trained using a specified quantity of computing power (set below the levels in the *prohibited transaction* definition), would have been subject to the notification requirement.

Violations

The Proposed Rule outlined the penalty and disclosure framework for violations. A violation would have been subject to civil and criminal penalties as set forth in IEEPA. In the event of a violation, the Treasury Department would have been authorized to impose civil penalties and could also have referred criminal violations to the Attorney General. The Secretary also could have taken any action authorized under IEEPA to nullify, void, or otherwise require divestment of any *prohibited transaction*. The Proposed Rule would have provided a process for a *U.S. person* to submit a voluntary self-disclosure if they believed their conduct may have resulted in a violation of any part of the Proposed Rule. Such self-disclosure would have been taken into consideration during the Treasury Department's determination of the appropriate response to the self-disclosed violation.

II. Overview of Comments on the Proposed Rule

The public was given an opportunity to comment on the Proposed Rule, and comments were due by August 4, 2024. The public comments received are available on the rulemaking docket at <https://www.regulations.gov> (Docket TREAS-DO-2024-0012). The Treasury Department received over 40 comment letters in response to the Proposed Rule reflecting a range of views. The Treasury Department considered each comment before issuing this final rule (Final Rule). Discussed below are the comments received and the Treasury Department's responses in consideration of the comments.

III. Discussion of the Final Rule

A. Scope and Objective of the Final Rule

The preamble to the Proposed Rule noted that its focus was on the types of U.S. investments that presented a likelihood of conveying both capital and intangible benefits that could be exploited by countries of concern to accelerate the development of sensitive technologies or products in ways that negatively impact the national security of the United States. With an interest in minimizing unintended consequences and addressing the national security risks posed by countries of concern developing technologies that are critical to the next generation of military, intelligence, surveillance, or cyber-enabled capabilities, the Proposed Rule included detailed definitions and descriptions of terms and elements to appropriately scope coverage and facilitate compliance by United States persons. At the same time, the Proposed Rule sought to avoid loopholes that could have undermined the national security objectives of the Outbound Order.

Several commenters noted their support for the overall goals of the Outbound Order and Proposed Rule. One commenter commended the Treasury Department for taking action to stop U.S. investment in entities backed by the Chinese Communist Party that threaten U.S. national security. Another commenter endorsed U.S. Government efforts to ensure entities that pose national security threats are denied access to all U.S. investors and U.S. capital markets. Several commenters expressed support for the Treasury Department's goal of restricting investment that would accelerate the development of military, intelligence, surveillance, and cyber-enabled capabilities in countries of concern. Another commenter emphasized the importance and difficulty of countering

the undesired transfer of emerging technologies. One commenter commended the Treasury Department's recognition that U.S. leadership in emerging technologies is critical to long-term U.S. interests, while another noted that maintaining a healthy U.S. semiconductor industry is an essential component to protecting national security.

Several commenters noted the importance of balancing the protection of national security with the maintenance of economic competitiveness and an open investment policy. One commenter stated that a well-designed rule would have actionable requirements that achieve the Treasury Department's goals while mitigating unintended consequences.

Several commenters highlighted the importance of clarity in the Proposed Rule, especially in the definitions, or requested further clarification. Other commenters requested that the rule be no more burdensome than necessary to achieve its aims. One commenter encouraged the Treasury Department to be mindful of the implications of the U.S. Supreme Court decision in *Loper-Bright v. Raimondo*, 144 S. Ct. 2244 (2024), particularly related to implementation of broad authorities and industry's reliance on a stable, clear, and predictable regulatory environment.

One commenter highlighted a think tank report about outbound investment that encouraged authorities to target the highest risk transactions and recommended establishing a rule that is proportionate, easy to understand, nonduplicative of existing tools, and that enables dialogue with allies about adopting similar regimes.

Other commenters expressed the view that the Proposed Rule was too broad or not designed to address the threat identified in the Outbound Order. Some commenters requested the notification requirement be removed from the rule, with one commenter expressing the view that the notification requirement would not address the threat identified in the Outbound Order. One commenter asserted that the investment restriction in the Proposed Rule was based on misconceptions and assumptions about the PRC government and PRC businesses that are not supported by evidence. Another commenter asserted that the Proposed Rule represents a departure from the United States' traditional support for free and open capital flows. Another commenter characterized the Proposed Rule as unreasonable and contrary to principles of free and fair trade. The commenter alleged that the Proposed Rule would

obstruct opportunities for PRC companies, limit the innovation capacity of the United States, and destroy the global industrial supply chain. Another commenter expressed concern that the Proposed Rule is overly broad and that it underestimates the potential negative impacts on investment managers.

In response to these comments, the Treasury Department notes that the United States has long maintained an open investment policy and supported cross-border investment where consistent with U.S. national security interests. In developing the Final Rule, the Treasury Department has sought to maintain the goals of both open investment and protection of national security by focusing on U.S. investments that present a likelihood of conveying both capital and intangible benefits that can be exploited to accelerate the development of sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern in ways that threaten the national security of the United States.

The Treasury Department also recognizes the potential for unintended consequences that may arise under the Final Rule and has sought to further minimize the impact of those consequences, including through changes to the definitions of *covered transaction* and *excepted transaction* in the Final Rule that are described below. The Treasury Department made these changes to provide additional clarity, improve administrability, and facilitate compliance by *U.S. persons*, while also cognizant of the need to close loopholes that could undermine the national security objectives of the Outbound Order. In addition, as discussed further below, the Treasury Department anticipates providing additional information on its Outbound Investment Security Program website to facilitate compliance by *U.S. persons*.

Similar to the Proposed Rule, the Final Rule seeks to complement existing authorities and tools of the U.S. Government, such as export controls and inbound investment reviews. The Final Rule addresses the complex and evolving national security threat identified in the Outbound Order.

The Treasury Department also notes that the Final Rule is based on the President's finding in the Outbound Order that *countries of concern* are "engaged in comprehensive, long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries' military, intelligence, surveillance, or cyber-

enabled capabilities." The President's finding also notes that "[a]s part of this strategy of advancing the development of these sensitive technologies and products, *countries of concern* are exploiting or have the ability to exploit certain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed." The Treasury Department assesses that the requirements of the Final Rule are narrowly scoped to focus on a limited subset of investment activity and to avoid unintended impacts in broader sectors of the U.S. or global economies. The Treasury Department also notes that imposing targeted measures to address acute national security risks is consistent with trade and investment agreements to which the United States is a party. The Treasury Department further notes that the two components of the program—that is, requiring notification of certain transactions and prohibiting other transactions—helps limit the impact on market participants while providing the Treasury Department with visibility into the volume and nature of *U.S. person covered transactions* and informing future policy development and decisions. Finally, regarding the potential unintended impact on asset managers, the Treasury Department notes that some modifications made to the Final Rule are specifically intended to limit the applicability to certain routine cross-border financial activity that the Treasury Department has determined is unlikely to result in the transfer of intangible benefits along with capital that can be exploited to threaten U.S. national security.

B. Statutory Authority

As described above, the Outbound Order was issued by the President pursuant to his authority under the Constitution and the laws of the United States, including IEEPA, the NEA, and section 301 of title 3, U.S.C. The Outbound Order directs the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, to issue, subject to public notice and comment, regulations that, among other things, require *U.S. persons* to submit information to the Treasury Department regarding *notifiable transactions* and prohibit *U.S. persons* from engaging in *prohibited transactions*. Under section 10(a) of the Outbound Order, the President authorizes the Secretary to promulgate rules and regulations, including elaborating upon the definitions contained in the Outbound

Order. The Secretary's issuance of the Proposed Rule and this Final Rule under the Outbound Order is consistent with the President's authority to "issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise" of authorities granted under IEEPA (50 U.S.C. 1704) and the President's authority to designate and empower the head of any department or agency in the executive branch to perform any function which is vested in the President by law (3 U.S.C. 301).

One commenter raised questions about whether the Treasury Department had appropriate authority to issue and administer the rule. The commenter noted that Congress did not explicitly authorize the Assistant Secretary of the Treasury for Investment Security to oversee an outbound investment program in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA; Subtitle A of Title XVII of Pub. L. 115–232, 132 Stat. 2173), the legislation that established the position of Assistant Secretary of the Treasury for Investment Security. The commenter noted that the establishment of the Outbound Investment Security Program would mean that the Assistant Secretary's duties would no longer be principally related to the Committee on Foreign Investment in the United States (CFIUS) as FIRRMA requires. The commenter also asserted that personnel hired under FIRRMA's hiring authority likewise must have CFIUS-related work as their primary responsibility, which in the commenter's view, does not encompass the rulemaking to implement the Outbound Order. The commenter also expressed the view that IEEPA could not be a source of authority for the Proposed Rule. The commenter expressed that in practice, the Proposed Rule sought to regulate access to expertise and professional networks, and that this was "sharing of information" that could not be prohibited under IEEPA unless such information was subject to espionage or export control laws.

The Treasury Department appreciates these comments and the opportunity to respond to the legal points they raise. IEEPA (50 U.S.C. 1701 *et seq.*) authorizes the President to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat. Nothing in FIRRMA limits the President's authority under IEEPA. As described in more detail above,

consistent with the framework of the NEA and IEEPA, the President declared a national emergency in the Outbound Order and directed the Secretary to issue regulations to address that emergency. As noted, the Secretary's promulgation of regulations under the Outbound Order is consistent with the President's authority to "issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise" of authorities granted under IEEPA (50 U.S.C. 1704) and the President's authority to designate and empower the head of any department or agency in the executive branch to perform any function which is vested in the President by law (3 U.S.C. 301).

As directed by the President, the Final Rule addresses the declared national emergency and threat to national security by prohibiting certain transactions and requiring notification of certain other transactions by *U.S. persons* involving subsets of sensitive technologies and products critical for military, intelligence, surveillance, or cyber-enable capabilities of *countries of concern*.

The commenter states that a provision of IEEPA exempting from regulation "the importation from any country, or the exportation to any country . . . of any information or informational materials" (50 U.S.C. 1702(b)(3)) forecloses the Treasury Department from issuing the rule under IEEPA. Consistent with the statute, neither the Proposed Rule nor the Final Rule regulates the export of "information or informational materials." Section 850.503 of the Final Rule explicitly provides that conduct referred to in 50 U.S.C. 1702(b) shall not be regulated or prohibited, directly or indirectly, by this part. Instead, the Proposed Rule would have regulated, and the Final Rule will regulate, *covered transactions*. Consistent with the national emergency framework described above, IEEPA unambiguously authorizes the President to, among other things, "regulate . . . transactions involving[] any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States" (50 U.S.C. 1702(a)(1)(B)), and the Outbound Order, ANPRM, Proposed Rule, and Final Rule rely on this authority. The existence of a *covered transaction* is a fundamental prerequisite for the application of the notification requirement and prohibitions under the Proposed Rule or Final Rule, and the concept of a *covered transaction* has been crafted in a manner consistent with both section

1702(b) of IEEPA and section 850.503 of the Final Rule. *Notifiable transactions* and *prohibited transactions* are each defined as *covered transactions* in which the relevant *covered foreign person* undertakes (or in certain instances, the *U.S. person* knows will or plans to undertake) specified *covered activities*. The types of transactions that may constitute a *covered transaction* are the acquisition of an equity interest or *contingent equity interest*; certain debt financing that affords certain rights to the lender; the conversion of a *contingent equity interest*; a greenfield investment or other corporate expansion; a joint venture; and certain investments as an LP in a non-*U.S. person* pooled investment fund. Granting access to expertise or professional networks via a *U.S. person* is not a *covered transaction*, and thus is not subject to regulation under the Final Rule.

The commenter observes that the duties of the Assistant Secretary of the Treasury for Investment Security, as defined in 50 U.S.C. 4565(k)(4)(A)(ii)(II), must be "principally related to [CFIUS]." The Final Rule and the establishment of the Outbound Investment Security Program within the Treasury Department's Office of Investment Security are consistent with this requirement. Taking into account factors such as budget, personnel, and allocation of time, the Assistant Secretary for Investment Security's duties, and those of relevant Treasury Department staff, will remain principally related to CFIUS, even with the Outbound Investment Security Program coming under the Assistant Secretary's purview.

C. Summary of Comments to the Proposed Rule and Changes From the Proposed Rule

The discussion below summarizes comments submitted to the Proposed Rule and the Treasury Department's responses to those comments. For provisions that are not discussed below, the Treasury Department did not receive any substantive comments on those provisions and is implementing them in the Final Rule without substantive change from the Proposed Rule.

Subpart A—General

§ 850.101—Scope

Section 850.101 of the Proposed Rule outlined the scope of the Proposed Rule. Section 850.101(a) explained that the Proposed Rule implemented the Outbound Order, and § 850.101(b), (c), and (d) discussed at a high level certain key terms and requirements in the

Proposed Rule, namely *covered transactions* and *excepted transactions*, along with *notifiable* and *prohibited transactions* and the requirements for *U.S. persons* and *controlled foreign entities* regarding *notifiable* and *prohibited transactions*. Section 850.101(e) described requirements in the Outbound Order for the Secretary to communicate with Congress and the public with respect to implementation of the Outbound Order and consult with specified departments and agencies on various aspects of the Outbound Order and regulations.

The Treasury Department did not receive any comments on § 850.101 of the Proposed Rule. The Final Rule adopts § 850.101 in a form nearly identical to that in the Proposed Rule but makes some non-substantive edits to the structure of paragraphs (c) and (d) to clarify the requirements applicable to the Secretary's determination with respect to *covered activities*.

§ 850.104—Knowledge Standard

Under § 850.104 of the Proposed Rule, certain provisions, including in the definition of *covered transaction*, would have applied only if a *U.S. person* knew of a relevant fact or circumstance. The definition of *knowledge* in the Proposed Rule at § 850.216 included the following: actual knowledge that a fact or circumstance existed or was substantially certain to occur, an awareness of a high probability of a fact or circumstance's existence or future occurrence, or reason to know of a fact or circumstance's existence. The definition of *covered transaction* in the Proposed Rule at § 850.210 generally would have required the *U.S. person* to know (or in some circumstances, to intend) at the time of a transaction that the transaction involved a *covered foreign person*, would have resulted in the establishment of a *covered foreign person* (in the case of a greenfield, brownfield, or a joint venture investment), or would have resulted in a *person of a country of concern's* engagement in a new *covered activity* (in the case of a business pivot). The Proposed Rule noted that the Treasury Department was not proposing to hold a *U.S. person* liable for a transaction that had all of the other attributes of a *covered transaction* but that the *U.S. person* did not know at the time (which would have included not having "reason to know" at the time) was involved with or would have resulted in a *covered foreign person*. As discussed in the Proposed Rule, if a *U.S. person* failed to conduct a "reasonable and diligent inquiry" at the time of a transaction and undertook the

transaction where a particular fact or circumstance indicative of a *covered transaction* was present, the Treasury Department might have found in the course of determining compliance with the Proposed Rule that the *U.S. person* had reason to know of such fact or circumstance (and therefore, for purposes of the Proposed Rule, *knew*). To provide further clarity, the Proposed Rule, in § 850.216, included some of the factors that the Treasury Department would have considered in assessing whether a *U.S. person* undertook such an inquiry, as applicable. These included efforts to obtain contractual assurances and information that should have been obtainable through a reasonable transactional due diligence process with respect to the determination of a transaction's status as a *covered transaction* or relevant entity's status as a *covered foreign person*.

The Treasury Department received comments on several aspects of § 850.104 of the Proposed Rule. In response, the Treasury Department has made changes to clarify this provision in the Final Rule and discusses other issues below.

Commenters sought clarification or guidance on how the Treasury Department will evaluate the sufficiency of a *U.S. person's* due diligence as part of determining whether a "reasonable and diligent inquiry" occurred, citing potential obstacles to conducting due diligence in the PRC. Several commenters asked that the Treasury Department explicitly acknowledge the challenges of conducting due diligence in foreign jurisdictions and provide specific due diligence guidance, include language in the rule that makes clear that it will evaluate a *U.S. person's* due diligence efforts based on the totality of the facts and circumstances, and/or provide a safe harbor from enforcement if the *U.S. person* takes specific due diligence steps, such as soliciting or securing representations and warranties or using representative due diligence questions that some commenters requested be provided by the Treasury Department. A few commenters suggested that, with respect to the language in the Proposed Rule regarding a "relevant counterparty," a *U.S. person's* due diligence obligations should be limited to obtaining certain representations and warranties in the relevant investment agreement.

As in the Proposed Rule, § 850.104(c) of the Final Rule sets forth an illustrative list of factors that the Treasury Department will consider in assessing whether a *U.S. person* has undertaken a "reasonable and diligent

inquiry" with respect to a particular transaction. The Treasury Department recognizes that some of the considerations in 850.104(c) may be inapplicable to a given transaction. In response to comments seeking clarity regarding how the Treasury Department will evaluate the sufficiency of a *U.S. person's* due diligence, the Treasury Department has added a new paragraph (d) to § 850.104 of the Final Rule to clarify that the Treasury Department's assessment of whether a *U.S. person* has undertaken a "reasonable and diligent inquiry" will be made based on a consideration of the totality of relevant facts and circumstances. This new language accounts for the circumstance where a *U.S. person* may face obstacles to conducting due diligence, while preserving the necessary flexibility to consider the individual facts and circumstances of a transaction when assessing whether a "reasonable and diligent inquiry" has occurred.

The Treasury Department declines to include a safe harbor provision or to prescribe specific due diligence obligations in the Final Rule. Rather, the Final Rule is designed to address the fact-specific and individualized nature of each transaction by offering an illustrative list of considerations at § 850.104(c), in combination with § 850.104(d), as described above.

One commenter stated that the Treasury Department should not consider an entity's refusal to make representations or warranties to be a warning sign, by itself, while another commenter stated that they did not believe they would be able to credibly assess information received from an investment target for warning signs. Given the variety of forms a warning sign could take, the Final Rule does not prescribe what a warning sign or red flag would be, but § 850.104(d) addresses commenter concerns by stating that the totality of the relevant facts and circumstances shall be considered in determining if the *U.S. person* has undertaken a "reasonable and diligent inquiry." If, for example, a *U.S. person* is unable to obtain certain information from a transaction counterparty, or unable to obtain relevant representations or warranties, the presence or absence of other relevant factors may be relevant to the consideration of whether, in totality, the *U.S. person* undertook a "reasonable and diligent inquiry."

Commenters also requested clarification that a *U.S. person* will not be held responsible for an investment target's provision of false or inaccurate information or failure to provide information, or at least will have safe

harbor for good faith reliance on the information provided absent warning signs or contradictory information. Another commenter noted that *U.S. persons* would have to rely on unverified responses from prospective portfolio companies because much of the information would be in the exclusive possession of the target company and may be proprietary.

The Treasury Department acknowledges that in certain instances, information required to assess whether a transaction is a *covered transaction* may be difficult to ascertain. In such circumstances, and in the absence of warning signs, a *U.S. person* may wish to obtain representations or warranties from the relevant transaction counterparty regarding pertinent information such as the investment target or counterparty's ownership, investments, and activities.

Multiple commenters sought clarification regarding how the Treasury Department will evaluate a *U.S. person's* efforts to obtain information in the context of an assessment of a "reasonable and diligent inquiry." One commenter asked that the Treasury Department not evaluate a *U.S. person's* efforts to obtain non-publicly available information, but merely assess whether they evaluated what was in their possession. The commenter stated that it would be sufficient for the Treasury Department to make clear that this factor, and others, would be evaluated in light of the totality of the facts and circumstances, including the sophistication of the *U.S. person*. One commenter asked for clarification regarding the degree of effort that a *U.S. person* must exert to obtain non-publicly available information. Another questioned what "available" means—whether it refers to information in the *U.S. person's* possession, information that the *U.S. person* could obtain in the normal course of business, or information that must be sought. A few commenters indicated that they did not believe they would be able to review all publicly available information about a target due to the voluminous amount of public information often available regarding a target, much of it not in English, and the timeframes on which many venture capital deals occur. One commenter asked whether a risk-based approach was sufficient. Another commenter asked for clarification that only *U.S. persons* who are party to *covered transactions* are obligated to conduct the required "reasonable and diligent inquiry."

Other commenters sought information about the degree to which a *U.S. person* must access commercially available

databases, while another commenter requested guidance regarding which sources for non-publicly available information a *U.S. person* should review. Another commenter suggested that, in absence of specific guidance, the Treasury Department include a safe harbor for good faith reliance on a reasonable interpretation of the rule's requirements.

Under the Final Rule, a *U.S. person* is responsible for *knowledge* the *U.S. person* had or could have had through a "reasonable and diligent inquiry." The Treasury Department expects a *U.S. person* to make a reasonable effort, taking into account the context of a given transaction and any warning signs, among other factors.

The Final Rule adopts, with minor changes, the text of § 850.104(c)(3) and (4) from the Proposed Rule regarding "available non-public information" and "available public information" as well as a *U.S. person's* efforts to obtain it. The text of § 850.104(c)(3) now refers to the "efforts," rather than effort, of the *U.S. person*, for consistency with § 850.104(c)(4). Both sub-paragraphs now focus on the efforts of the *U.S. person* "as of"—instead of "at"—the time of the transaction. The Treasury Department assesses that the phrase "as of" better describes the process of due diligence leading up to and including the time of the transaction. Sections 850.104(c)(3) and 850.104(c)(4) have been further revised to describe efforts by the *U.S. person* to "obtain and consider" available non-public and public information, respectively, clarifying that the *U.S. person's* evaluation or assessment of the available public and non-public information is relevant. The Treasury Department assesses that the language in § 850.104(c) is otherwise sufficiently clear on its face, particularly in combination with the added § 850.104(d) that, as discussed above, explains that the "the totality of the relevant facts and circumstances" should be considered. Limiting consideration only to the information already in a *U.S. person's* possession, as one commenter requested, could incentivize purposeful blindness and is inconsistent with the intent of the Final Rule to require reasonable "inquiry" where certain relevant facts may not already be known to the *U.S. person*.

At the same time, § 850.104(c) of the Final Rule does not require a *U.S. person* to obtain and consider "all" publicly available information, and this is clear from the fact that the word "all" is not included in this paragraph. Instead, the expectation is that a *U.S. person* undertake a reasonable and

diligent approach to gathering and assessing information. The practical implication of such an approach may mean that, for example, a *U.S. person* investor is generally expected to view a transaction counterparty's responses or statements in light of other information contained in commercially available information sources in addition to information that is freely available to the general public. Such diligence is commonplace when investors are considering a transaction—such as when conducting diligence with respect to risks related to sanctions, bribery and corruption, or litigation exposure.

The Final Rule also includes a related technical edit to § 850.104(c)(7), adding "available" before "public and commercial databases." This edit is being made to clarify the scope of databases that may be reviewed and to be consistent with how other sources of information in § 850.104(c) are qualified with "available." It is not intended to affect the substance of the requirement.

One commenter requested that the Treasury Department identify specific standards or considerations for what constitutes a "reasonable and diligent inquiry" for an LP in an investment fund where the LP cannot reasonably know the specific targets of the fund. Another commenter asked that the Treasury Department publish a list of *covered foreign persons* to supplement—not replace—*U.S. person* due diligence efforts.

The Treasury Department notes that the foregoing discussion of the knowledge standard and a "reasonable and diligent inquiry" is generally applicable to an investment by a *U.S. person* and, like the Final Rule's approach to *knowledge* generally, is intended to account for a variety of situations and transaction structures. This also applies in the context of a *U.S. person* LP's investment into a non-*U.S. person* pooled investment fund. The Treasury Department declines to prescribe, in the Final Rule, particular assurances for an LP to seek from the manager of a fund or specific standards or considerations in situations where a *U.S. person* LP does not *know* a fund's specific investment targets at the time of the *U.S. person* LP's investment. As discussed further in the discussion of the definition of an *excepted transaction* below, the Treasury Department has determined to except *U.S. person* LP investments into funds if the *U.S. person* has obtained a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a *notifiable transaction* or a *prohibited transaction*, as applicable, if engaged in by a *U.S.*

person. Consistent with the Treasury Department's approach to the knowledge standard, the Treasury Department does not specify the particular language of such a binding contractual assurance. The Treasury Department also declines to provide a list of *covered foreign persons* in § 850.104 or elsewhere for the reasons set forth in the discussion of the definition of *covered foreign person* below.

One commenter requested the reference to legal counsel in § 850.104(c)(5) be deleted, arguing that it would permit an inappropriate imputation of knowledge to the *U.S. person*. In response and for consistency throughout § 850.104(c), the Treasury Department has removed the references to "legal counsel" from § 850.104(c)(1) and (5) of the Final Rule. Under the Final Rule, a *U.S. person* is responsible for information such person *knew* or should have known, following a "reasonable and diligent inquiry," although the Treasury Department notes that due diligence may be conducted on behalf of a *U.S. person* by the *U.S. person's* legal counsel or other representative.

A number of commenters requested clarification regarding the definition of "relevant counterparty" in § 850.104(c), stating that if the term were to include other investors of the relevant fund or other owners of the target portfolio company, then the necessary due diligence would be unduly burdensome. As such, one commenter asked that the term be defined to mean a party to the transaction, while others requested limiting the required diligence to parties participating in the transaction.

In response, the Treasury Department has adopted the suggestion made by commenters and modified § 850.104(c) to refer to "an investment target or other relevant transaction counterparty (such as a joint venture partner)" where applicable. This change is intended to clarify that as a general matter, the Treasury Department does not expect diligence to be conducted on *persons* who are not parties to the transaction. However, inquiries related to non-parties, such as beneficial owners or downstream entities that are not technically parties to the transaction, may be necessary to determine, for example, whether a party to a transaction is a *person of a country of concern* or a *covered foreign person*. Further, the Treasury Department believes the language regarding a "reasonable and diligent inquiry" is clear, as written, in referring to a *U.S. person* that is party to a transaction, rather than unrelated *U.S. persons*.

Commenters expressed similar views with respect to the feasibility of conducting due diligence to determine whether the criteria for a *person of a country of concern* is met. Some commenters expressed concern that the definition would require due diligence with respect to all investments. One commenter requested a standard with specific factors for investments in private equity or venture capital funds, such as researching past investments, engaging with the general partner, and reviewing a fund's prospectus. Another commenter recommended that the rule include factors for identifying a *person of a country of concern*, as well as language deeming an inquiry reasonable and diligent, "if and only if, based on these factors, it will typically be adequate to correctly identify persons of concern."

Given the wide variety of possible transaction structures and for the reasons stated above, the Treasury Department declines to adopt prescriptive diligence standards as they relate to particular transaction structures or the application of a particular definition in the Final Rule. Instead, the knowledge standard discussed in the Final Rule, the specific factors enumerated in § 850.104(c), and the consideration of the totality of relevant facts and circumstances described in § 850.104(d) explain the obligations and expectations regarding due diligence under the Final Rule.

Knowledge Standard—Final Rule Summary

The Final Rule specifies that certain provisions, including § 850.210, which defines *covered transaction*, will apply only if a *U.S. person* has *knowledge* of the relevant facts or circumstances at the time of a transaction. The definition of *knowledge* set out in § 850.216 includes any of the following: actual knowledge that a fact or circumstance exists or is substantially certain to occur, an awareness of a high probability of a fact or circumstance's existence or future occurrence, or reason to know of a fact or circumstance's existence.

The definition of *covered transaction* requires the *U.S. person* to *know* at the time of a transaction that the transaction involves a *covered foreign person*, will result or is planned to result in the establishment of a *covered foreign person* (in the case of a greenfield, brownfield, or joint venture investment), or will result or is planned to result in a *person of a country of concern's* engagement in a *covered activity* (in the case of a brownfield investment). The Treasury Department

will not consider a transaction that has all of the other attributes of a *covered transaction* but that the *U.S. person* does not *know* at the time of the transaction (which includes not having "reason to know" at the time of the transaction) involves or will result in a *covered foreign person* to be a *covered transaction* subject to the notification requirement or prohibition, as applicable. The Treasury Department notes, however, that if the *U.S. person* subsequently acquires actual knowledge of a fact or circumstance that, if known at the time of the transaction, would have caused the transaction to be a *covered transaction*, the *U.S. person* is required to notify the Treasury Department pursuant to § 850.403 of the Final Rule. If a *U.S. person* fails to conduct a "reasonable and diligent inquiry" at the time of a transaction and undertakes the transaction where a particular fact or circumstance indicative of a *covered transaction* is present, the Treasury Department may find in the course of determining compliance with the Final Rule that the *U.S. person* had reason to know (and therefore, for purposes of the proposed rule, *knew*) of such fact or circumstance. To provide clarity, § 850.104 of the Final Rule includes some of the factors that the Treasury Department will consider in assessing whether a *U.S. person* undertook such an inquiry. That inquiry will be based on a consideration of the totality of the facts and circumstances. These include efforts to obtain information and contractual assurances that should be obtainable through a reasonable transactional due diligence process with respect to the determination of a transaction's status as a *covered transaction* or relevant entity's status as a *covered foreign person*. Accordingly, the Final Rule adds a new provision clarifying that an assessment of whether a *U.S. person* has undertaken a "reasonable and diligent inquiry" will be made based on a consideration of the totality of relevant facts and circumstances.

If a *U.S. person* has undertaken a "reasonable and diligent inquiry" and still does not have *knowledge* of a fact or circumstance relevant to whether a transaction involves or will result in a *covered foreign person* in a way that will render the transaction a *covered transaction*, the knowledge requirements in § 850.210 are not met.

The Treasury Department anticipates making additional information available on its Outbound Investment Security Program website regarding topics such as the application of the knowledge standard.

Subpart B—Definitions

§ 850.202—AI System

As discussed in the Proposed Rule, the U.S. Government is concerned with the development of *AI systems* that enable the military modernization of *countries of concern*—including weapons, intelligence, and surveillance capabilities—and those that have applications in areas such as cybersecurity and robotics. Additionally, the U.S. Government is concerned with software and hardware, among other things, that incorporate such *AI systems*. The policy objective of the definition is to cover U.S. investment into entities that develop *AI systems* with applications that pose, or have the potential to pose, significant national security risks, without broadly capturing investments into entities that develop *AI systems* intended only for consumer applications or other civilian end uses with no potential national security consequences. To address these concerns, the Proposed Rule included a notification requirement and a prohibition with respect to investments into entities engaged in certain *covered activities* involving *AI systems*.

Under the Proposed Rule, *AI system* was defined in § 850.202(a) as a machine-based system with certain specified functions and characteristics. Section 850.202(b) of the Proposed Rule included within the definition of the term any data system, software, hardware, application, tool, or utility that operated in whole or in part using such a machine-based system. As noted in the Proposed Rule, this definition combined the definitions of “artificial intelligence” and “AI system” from Executive Order 14110, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” issued on October 30, 2023 (the AI Order).

Several commenters expressed concern about the breadth of the definition in the Proposed Rule. One commenter argued that the definition did not differentiate products that pose a national security risk from those that do not. Others requested the removal of § 850.202(b) from the definition of *AI system*, noting that its inclusion would cover products, services, or applications that incorporate AI for internal or commercial use, which may not pose national security risks. Commenters cited the recent practice among technology firms to leverage, rather than develop, AI by incorporating AI capability into existing systems. Commenters suggested narrowing the definition of *AI system* to limit the impact on such firms and also make the rule more administrable. One

commenter requested that *AI systems* for medical use be excluded from the definition.

The Final Rule makes clarifying edits to the definition of *AI system* at § 850.202(a) by moving the clause “uses data inputs to” from (a) to (a)(1) in order to be consistent with the definition in the AI Order, and adjusts the first word at the beginning of each of (a)(2) and (a)(3) accordingly. Otherwise, the Final Rule adopts the text of § 850.202 from the Proposed Rule. The Treasury Department considered the comments requesting a narrower definition of *AI system* and the Final Rule adopts the text of § 850.202 from the Proposed Rule. However, in response to the comments, the Final Rule adds two notes to each of §§ 850.217 and 850.224. Note 2 clarifies how *AI systems* defined at § 850.202(b) are implicated by the criteria of *notifiable* and *prohibited transactions*. The Treasury Department notes that the scope of the *AI systems* definition is intentional, since a *covered transaction* involving an *AI system*, whether that system is an AI model or machine-based system described at § 850.202(a) or a system operating in whole or in part using a system described at § 850.202(a), that meets one or more of the listed end-use or computing power thresholds could contribute to the advancement of military, intelligence, surveillance, or cyber-enabled capabilities by a *country of concern*. While the scope of *AI systems* as defined at § 850.202(b) may implicate a range of persons who use third-party AI models or machine-based systems in a data system, software, hardware, application, tool, or utility, the Treasury Department notes that such persons would be implicated by the Final Rule only to the extent they *develop* the *AI system* defined at § 850.202(b) by engaging in the activities enumerated in § 850.211, such as design or substantive modification, with respect to the relevant third-party AI model or machine-based system being used. For example, a *person* engaging in substantive modifications of a third-party AI model that is being used by a data system, software, hardware, application, tool, or utility to operate in whole or in part, such as removing security measures or safeguards of the third-party AI model, would be *developing* an *AI system*. The addition of Note 2 clarifies this point, consistent with the definition for *develop* at § 850.211. The Final Rule also adds a Note 3 to each of §§ 850.217 and 850.224 to provide a carve-out for customizing, configuring, or fine-tuning a third-party AI model or machine-

based system that is being used by a data system, software, hardware, application, tool, or utility to operate in whole or in part, where such customization, configuration, or fine-tuning of the third-party AI model or machine-based system is strictly for a *person's* own internal, non-commercial use. Such activity would not itself trigger the notification requirements or prohibition delineated in § 850.217 or § 850.224, respectively, for *covered transactions* involving *AI systems*, unless it has government intelligence, mass-surveillance, or military end use, or is for digital forensics tools, penetration testing tools, or the control of robotic systems.

One commenter requested that the Treasury Department clarify that the computing power thresholds for a *notifiable transaction* or *prohibited transaction* involving an *AI system* pertain to the combined computing power required to train a given *AI system*, including computing power used to train relevant sub-models or generate inputs to inform such an *AI system*. The purpose of this clarification would be to prevent undercounting of computing power for an *AI system* where a *covered foreign person* may develop an AI system by combining smaller models or the learnings of other models. The same commenter also requested clarification regarding whether different versions of an *AI system* would be considered one system or multiple *AI systems*, and if adaptations of an *AI system* would be considered a new or distinct *AI system*.

The Treasury Department notes that the computing power thresholds refer to the aggregate or combined computing power required to train a given *AI system*. For example, the computing power required to train an *AI system* that is a combination of smaller, pre-trained AI models would be the summation of computing power required to train and combine each component model of the *AI system*. Similarly, developing an AI model based on the transfer of knowledge from one model to another would include the computing power required to train both models. The Treasury Department intends *persons* employing techniques to develop *AI systems* that are derived from, or are a combination of, other *AI systems* to evaluate the aggregate computing power required for training when assessing whether the *AI system* meets the criteria set forth in §§ 850.217(d)(3) and 850.224(k). For the purposes of assessing whether an *AI system* has any of the end-use applications set forth in §§ 850.217(d) and 850.224(j), the Treasury Department

notes that different versions of an *AI system*, including adaptations, derivatives, subsequent generations, or successor systems, should be assessed as distinct *AI systems* since the designed end-use or capabilities of a successor system could vary from a prior version.

One commenter stated the Treasury Department would need to hire technical staff to monitor changes in the AI marketplace and suggested the Treasury Department leverage technical talent at other U.S. Government agencies if the roles cannot be maintained within the Treasury Department. In response to this comment, the Treasury Department notes that the Outbound Order directs the Treasury Department to consult with relevant U.S. Government agencies on the implications for military, intelligence, surveillance, or cyber-enabled capabilities of covered national security technologies and products and potential covered national security technologies and products. The Treasury Department has leveraged the expertise of other U.S. Government agencies through the rulemaking process and will continue to do so in the implementation and administration of the Final Rule.

§ 850.205—Contingent Equity Interest

The Proposed Rule defined a *contingent equity interest* as a financial instrument that “currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.” While the Treasury Department did not receive any comments to the Proposed Rule’s definition of *contingent equity interest*, there were several comments that sought additional clarity on what types of contingent or convertible equity interests would be included in the definition of *covered transaction* at § 850.210(a)(1) and (3) of the Proposed Rule (defining *covered transactions* involving the acquisition or conversion of a *contingent equity interest*).

In response to these comments, the Final Rule modifies the definition of *contingent equity interest* at § 850.205 of the Proposed Rule. The definition of *contingent equity interest* in the Final Rule refers to a “financial interest,” rather than a “financial instrument” as in the Proposed Rule. As described below in the discussion to § 850.210 of the Final Rule, this change is intended to more accurately reflect the Treasury Department’s intent to cover the acquisition or conversion of interests that are convertible into an equity

interest, or provide the right to acquire equity interests. The definition of *contingent equity interest* in the Final Rule also clarifies that debt can constitute a financial interest that is convertible into, or provides the right to acquire, an equity interest.

§ 850.206—Controlled Foreign Entity

The Proposed Rule defined *controlled foreign entity* as an entity incorporated in, or organized under the law of, a country other than the United States of which a *U.S. person* was a *parent*. Section 850.219 of the Proposed Rule defined *parent* as a *U.S. person* that directly or indirectly held more than 50 percent of the outstanding voting interest or voting power of the board of the entity; was a general partner, managing member, or equivalent of the entity; or, if the entity was a pooled investment fund, was an investment adviser to any such fund. Section 850.302 of the Proposed Rule would have placed obligations on a *U.S. person* to take all reasonable steps to prohibit and prevent its *controlled foreign entity* from undertaking a transaction that would have been a *prohibited transaction* if undertaken by a *U.S. person*, and § 850.402 would have required a *U.S. person* to notify the Treasury Department if its *controlled foreign entity* undertook a transaction that would have been a *notifiable transaction* if undertaken by a *U.S. person*. The Treasury Department proposed defining *controlled foreign entity* using a bright line so that a *U.S. person* could easily ascertain whether an entity was its *controlled foreign entity*. The Treasury Department invited comments regarding this definition, including considerations with respect to the definition’s inclusion of entities established outside of the United States.

The Treasury Department received several comments on the definition of *controlled foreign entity*. After considering these comments, the Final Rule adopts § 850.206 as in the Proposed Rule without changes.

One commenter expressed support for the 50 percent threshold set forth in the definition of *parent* in § 850.219 of the Proposed Rule (and referred to in the definition of *controlled foreign entity* in § 850.206(a)) because it would provide a bright line framework to assist industry in complying with the rule’s requirements. The Treasury Department notes that paragraph 850.206(b) of the Proposed Rule delineated how the holdings of voting interest or voting power of the board of a subsidiary would have been attributed to the *parent*. Where the relationship between one entity and another would have been

that of *parent* and subsidiary, attribution would have been full. Where the relationship between an entity and another entity would have not been that of *parent* and subsidiary (*i.e.*, because the holdings of voting interest or voting power of the board of the first entity in the second entity would be 50 percent or less), then the indirect downstream holdings of voting interest or voting power of the board would have been attributed proportionately to the first entity.

Another commenter stated that the Proposed Rule’s definition of *controlled foreign entity* applied the 50 percent threshold to voting interest, which the commenter argued “deviates significantly from ANPRM, which had proposed basing the 50% calculation on revenue, income, expenditure and operating expense.” The commenter questioned whether a *U.S. person* with a 51 percent voting interest would be able to prevent its *controlled foreign entity* from entering into a *prohibited transaction* and suggested that the requirement would “impose an unrealistic knowledge standard” on the *U.S. person*, particularly in certain roles such as an investment adviser. This commenter appears to have conflated the ANPRM’s discussion of the term *controlled foreign entity* with its discussion of the term *covered foreign person*, a distinct term with a distinct definition, where revenue, income, expenditure, and operating expenses were discussed as part of the definition in the ANPRM and the NPRM. (See more below regarding the definition of *covered foreign person*.) Additionally, with a threshold above 50 percent of the “outstanding voting interest” or “voting power of the board” of an entity, it is reasonable to expect the *U.S. person parent* to have the power to influence the compliance infrastructure of its subsidiary. For a non-*U.S. person* pooled investment fund of which a *U.S. person* is an adviser (meaning again that the *U.S. person* is a *parent* and the fund is its *controlled foreign entity*), investment advisers often manage the investment portfolios of such pooled investment funds.

Commenters requested that the Treasury Department clarify that the *U.S. person parent* under 850.206(a) must be the ultimate parent entity and not an intermediary *U.S. person* without ultimate decision-making authority. In response, the Treasury Department has added a note (Note 1) to the definition of *parent* at § 850.219 of the Final Rule to clarify that a *U.S. person* that meets the definitional requirements of *parent* under § 850.219 constitutes a *parent*, including a *U.S. person* that is an

intermediate entity. Further information on the definition of *parent* is below in the discussion of § 850.219.

Controlled Foreign Entity—Final Rule Summary

The Final Rule defines *controlled foreign entity* as an entity incorporated in, or otherwise organized under the laws of, a country other than the United States of which a *U.S. person* is a *parent*. Section 850.219 of the Final Rule defines *parent* as a *U.S. person* that directly or indirectly holds more than 50 percent of the outstanding voting interest or voting power of the board of the entity; is a general partner, managing member, or equivalent of the entity; or, if the entity is a pooled investment fund, is an investment adviser to any such fund.

In determining whether a *U.S. person* indirectly holds voting interest or voting power of the board via a tiered ownership structure for purposes of this section of the Final Rule, where the relationship between an entity and another entity is that of a *parent* and subsidiary, the voting interest or voting power of the board of a subsidiary will be fully attributed to the *parent*. By contrast, if an entity holds 50 percent or less of another entity's voting interest or voting power of the board—that is, if the relationship is not a *parent*-subsidiary relationship—then the indirect downstream holdings of voting interest or voting power of the board, as applicable, attributed to the first entity will be determined proportionately.

If a *U.S. person* holds both direct and indirect holdings in the same entity, the direct and indirect holdings of the *U.S. person*'s voting interest or voting power of the board, as applicable, will be aggregated. For the avoidance of doubt, each of these metrics (voting interest or voting power of the board) will be evaluated independently from the other. For example, if an entity has 20 percent of its voting interest and 15 percent of its voting power of the board each held by a *U.S. person*, these percentages will not be combined to equal 35 percent.

Section 850.206 should be read in connection with §§ 850.302 and 850.402, which place obligations on a *U.S. person* to take all reasonable steps to prohibit and prevent its *controlled foreign entity* from undertaking a transaction that would be a *prohibited transaction* if undertaken by a *U.S. person*, and to notify the Treasury Department if the *controlled foreign entity* undertakes a transaction that would be a *notifiable transaction* if undertaken by a *U.S. person*, respectively.

§ 850.208—Covered Activity

The Proposed Rule identified activities that would provide the relevant nexus between the *covered foreign person* and the covered national security technologies and products described in the Outbound Order. The Outbound Order defines the term “covered national security technologies and products” to mean sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and AI sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*, as determined by the Secretary in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies. The Outbound Order further states that, where applicable, “covered national security technologies and products” may be limited by reference to certain end uses of those technologies or products.

The three primary definitions in the Proposed Rule implementing the term “covered national security technologies and products” were *covered activity*, *notifiable transaction*, and *prohibited transaction*. The term *covered activity* meant, in the context of a particular transaction, any of the activities referred to in the definition of *notifiable transaction* in § 850.217 or *prohibited transaction* in § 850.224.

The definitions of *notifiable transaction* and *prohibited transaction* in the Proposed Rule identified specific *covered activities* relevant to the technologies or products within each category. Some such *covered activities* related to semiconductors and microelectronics technology, equipment, and capabilities that enabled the production and certain uses of integrated circuits that underpin current and future military innovations that improved the speed and accuracy of military decision-making, planning, and logistics, among other things; as well as that enabled mass surveillance or other cyber-enabled capabilities. The Proposed Rule also addressed *covered activities* related to quantum information technologies and products that enabled capabilities that could have compromised encryption and other cybersecurity controls and jeopardize military communications, among other things. In the case of a quantum sensing platform or quantum network, the end-use provision would have avoided covering use cases in strictly civilian fields. Finally, the Proposed Rule addressed *covered activities* related to certain *AI systems* with applications

that posed or had the potential to pose significant national security risks. The Proposed Rule did not seek to broadly capture *AI systems* intended only for commercial applications or other civilian end-uses that did not have potential national security consequences.

The Treasury Department received several comments related to the definition of *covered activity* that focused on certain aspects of the definitions of *notifiable transaction* and *prohibited transaction*. Those comments are discussed in the sections below on *notifiable transaction* and *prohibited transaction*.

In the Final Rule, the Treasury Department adopts § 850.208 without change from the Proposed Rule. *Covered activity* means, in the context of a particular transaction, any of those activities included in the definition of *notifiable transaction* in § 850.217 or *prohibited transaction* in § 850.224. The term *covered activity* encompasses technologies and products that may contribute to the threat to the national security of the United States by cross-referencing the definition of *notifiable transaction* and also incorporates those technologies and products that pose a particularly acute national security threat by cross-referencing the definition of *prohibited transaction*. The scope of *notifiable transaction* and the scope of *prohibited transaction* are intended to be distinct and not overlap. The Treasury Department intends the notification requirement to increase the U.S. Government's visibility into *U.S. person* transactions involving the relevant technologies and products and expects that these notifications will be helpful in highlighting aggregate sector trends and related capital flows as well as informing future policy development. The prohibitions are tailored restrictions on specific, identified areas to prevent *U.S. persons* from investing in the development of technologies and products that pose a particularly acute national security threat. Both the specific *covered activities* as well as the technical descriptions in the Final Rule were scoped with these objectives in mind.

§ 850.209—Covered Foreign Person

The Outbound Order requires the Treasury Department to prohibit or require notification of certain transactions involving a *covered foreign person* and defines the term as “a person of a country of concern who or that is engaged in activities, as identified in the regulations issued under [the Outbound Order], involving one or more covered national security

technologies and products.” The definition of *covered foreign person* in the Proposed Rule described three sets of circumstances that would have caused a *person* to be a *covered foreign person*:

- A *person of a country of concern* that engages in a *covered activity* (§ 850.209(a)(1));
- Any person that has a particular relationship with a *person of a country of concern* that engages in a *covered activity*—i.e., where (1) the person holds a specific interest in such *person of a country of concern*, such as a voting interest, board seat, equity interest, or the power to direct or cause the direction of the management or policies of the *person of a country of concern* through contractual arrangement(s) (including, for the avoidance of doubt, any contractual arrangement with respect to a variable interest entity); and if there is such an interest, (2) more than 50 percent of the first person’s revenue, net income, capital expenditure, or operating expenses is attributable to such *person of a country of concern*, individually or in the aggregate (§ 850.209(a)(2)); or
- A *person of a country of concern* that participates in a joint venture with a *U.S. person* if such joint venture engages or intends to engage in a *covered activity* (§ 850.209(a)(3)).

One commenter stated that the definition of a *covered foreign person* in § 850.209(a)(1) would impact a broad range of businesses and activities because the definition of “national security technologies and products” in the Proposed Rule was “obscure.” The Treasury Department notes that “national security technologies and products” was not a defined term in the Proposed Rule, although the Outbound Order does refer to “covered national security technologies and products” as noted above in the discussion of § 850.208. The Outbound Order directs the Treasury Department to issue regulations that identify categories of *notifiable transactions* as well as categories of *prohibited transactions* that involve “covered national security technologies and products.” Both the Proposed Rule and this Final Rule define *notifiable transaction* and *prohibited transaction*, and the definition of a *covered activity* in § 850.208 of the Final Rule specifies that it refers to “any of the activities referred to” in those definitions. The commenter did not offer concrete suggestions regarding where or how any of the foregoing defined terms could be modified.

Covered Foreign Person—“Engages In”

A number of commenters suggested that the term “engages in,” as used in § 850.209(a)(1) of the Proposed Rule to connect a *person of a country of concern* to a *covered activity*, should be further defined or clarified. One commenter stated that without further clarification, “engages in” could include ancillary activities such as the ownership of intellectual property, the direction of other companies’ or entities’ activities, or involvement in *covered activities* by an affiliate of the investment target. Another commenter requested clearer criteria linked to financial or business activities to avoid overbreadth.

As used in § 850.209(a)(1), the function of “engages in” is simply intended to provide a link between the *person of a country of concern* and the specified activities described in detail in §§ 850.217 (*notifiable transaction*) and 850.224 (*prohibited transaction*) (which, taken together, comprise the definition of *covered activity* in § 850.208). In other words, the language “engages in” is a succinct way to capture the activities described in §§ 850.217 and 850.224, such as designs, fabricates, packages, develops, and produces, among other things. The Treasury Department therefore considers the criteria for a *covered activity* to be sufficiently clear given the specificity with which the enumerated *covered activities* are described in relevant part in §§ 850.217 and 850.224 of the Final Rule. Similarly, various ancillary activities noted by commenters in response to this provision, as well as in response to the definition of *covered transaction* in § 850.210 (see the discussion of *covered transaction* below), would not be within the scope of the Final Rule if they do not meet the criteria set forth in the definition of a *covered transaction* (including the terms used in that definition).

One commenter asked that the rule distinguish between activities that are legitimately part of a *person of a country of concern*’s normal operations and those activities that might be conducted by individual employees or without the guidance or supervision of a *person of a country of concern*’s management. One commenter asked that the Treasury Department clarify that an entity must directly implement the *covered activity*.

Regarding the distinction that one commenter raised between a *covered activity* that is *known* to a *person of a country of concern* investment target and employee-level activity that is not authorized by or not *known* to an investment target’s management, under the Final Rule, whether or not a

transaction is a *covered transaction* depends in part on whether the *U.S. person knows*, based on a reasonable and diligent inquiry, that the investment target or relevant transaction counterparty (such as a joint venture) is a *covered foreign person*. It may be the case that if the investment target itself was unaware that its employees were engaging in a *covered activity*, the *U.S. person* would not have reason to *know* that the investment target was engaging in a *covered activity*, particularly if no other information was available to indicate the presence of such activity. In response to one commenter’s question about whether an entity must “directly implement” a *covered activity*, absent other facts (such as an intent to evade the Final Rule), to be assessed to be “engaging in” a *covered activity*, a *person of a country of concern* would need to perform one of the specific actions set forth in either § 850.217 or § 850.224. To be assessed to be “engaging in” a *covered activity* described in § 850.217(a), for example, would require that the relevant *person of a country of concern* itself designs the integrated circuit, as described in that paragraph.

One commenter suggested that a *person of a country of concern* should be considered to “engage” in a *covered activity* only if it either conducts or participates in a *covered activity* or has a “demonstrated business objective” to conduct or participate in a *covered activity*. The Treasury Department declines to make the changes suggested in this comment. The use of the language “conducts or participates” in place of “engages in” is not necessary given the Treasury Department’s explanation of the role of “engages in” above, and the use of two verbs instead of one could introduce ambiguity. Regarding a “demonstrated business objective,” under the Final Rule, a *U.S. person* is responsible for information such person *knew* or should have known, following its own “reasonable and diligent inquiry,” as to whether a *person of a country of concern* “engages in” a *covered activity*. While such inquiry may take into account any “demonstrated business objectives,” identification of a “demonstrated business objective” is not necessary for a *person of a country of concern* to “engage” in a *covered activity*, nor is the identification of such an objective necessarily part of a “reasonable and diligent inquiry.” In addition, and independently, the Treasury Department believes that a *person of a country of concern* “engaging in” a *covered activity* raises national security

concerns regardless of whether such activity comprises a “business objective” at that time. For example, early-stage entities may develop certain technologies that are not yet part of a “business objective,” but might become so later. In addition, and independently, a “demonstrated business objective” can frequently refer to future intent, while “engages in” as used in § 850.209(a)(1) refers to the underlying activities of an investment target at the time of the *covered transaction*, although this does not remove from coverage certain transactions intended to evade the Final Rule, such a *covered foreign person*’s raising capital from a *U.S. person* investor for the specific purpose of “engaging in” a *covered activity*. (See further discussion of this issue below.)

Commenters asked about the temporal aspects of “engages in.” One recommended that “engages in” require that engagement in a *covered activity* be “active and ongoing,” while another commenter asked whether past activity, ceased at the time of a transaction, would be covered. One suggested a definition of “engages in” to address both their questions about the temporal scope of “engages in” as well as their requested inclusion of a de minimis threshold (discussed further below), which would define “engages in” as: “(a) conducts or participates in a covered activity or (b) has a demonstrated business objective to conduct or participate in a covered activity.”

The Treasury Department has determined not to change § 850.209(a)(1) in the Final Rule. The Treasury Department notes that in the context of § 850.209(a)(1), “engages in,” which is phrased in the present tense, refers to a *person* performing the specific actions described in detail in §§ 850.217 and 850.224 at the time of a transaction, and does not have retroactive applicability. A *person of a country of concern* “engaging in” the *covered activity* described in § 850.217(a), for example, would require that the *person of a country of concern* itself designs the integrated circuit, as described in that paragraph, at the time of a *covered transaction*. While the use of the present tense of the verb “engages” is deliberate, a *person of a country of concern* cannot avoid application of the Final Rule simply by ceasing the *covered activity* during fundraising only to resume the *covered activity* following the fundraising (see § 850.604). Nor does the present tense remove from coverage a *person of a country of concern* that, for example, is raising capital from a *U.S. person* investor for the specific purpose of

“engaging in” a *covered activity*. In other words, “engages in” refers to an attribute of an entity’s business, not a condition that it be continuously occupied with a particular activity.

Several commenters requested that the Treasury Department consider a de minimis activity threshold in the definition of a *covered foreign person* as it relates to their “engagement” in a *covered activity*, below which the definition of *covered foreign person* would not apply. Several commenters stated that compliance challenges could arise without such a threshold, including ambiguity in the definition of *covered foreign person*. One commenter noted that such a threshold would be necessary to avoid unintended consequences for transactions that have no nexus to national security because the *covered activity* “engaged in” by the investment target may be unrelated to the transaction itself.

The Treasury Department declines to institute a de minimis exception with respect to the “engages in” language of § 850.209(a)(1). Setting a de minimis threshold based on the level of activity involving a covered technology or product would be challenging from a regulatory and administrative perspective and would likely introduce ambiguity. In response to comments regarding ambiguity in the Proposed Rule’s formulation (which has been adopted without changes in the Final Rule), the Treasury Department reiterates that any amount of a *covered activity* by a *person of a country of concern* is sufficient for such person to be defined as a *covered foreign person* in the Final Rule. This is because the Treasury Department has determined that national security concerns arise in the context of any amount of such activity by a *person of a country of concern*, particularly in the context of early-stage companies and/or emerging technologies, the rapid expansion of which could be significantly aided by the intangible benefits provided by a *U.S. person* investor. Regarding one commenter’s contention that without a de minimis threshold transactions that lack a national security nexus but where the transaction counterparty undertakes de minimis *covered activities* completely unrelated to the transaction would be prohibited, the commenter does not provide a specific suggestion for how a de minimis threshold would be defined or operationalized, or how the Treasury Department could ascertain that a transaction is “completely unrelated” to the *covered activity* given that intangible benefits often accompany investments by *U.S. persons* that help companies succeed,

and there is no apparent mechanism by which the company-wide benefits conferred by a *U.S. person* could be relegated only to those operations of an investment target that do not raise national security concerns. However, the definitions of *covered activities* in §§ 850.217 and 850.224 are narrow and precise, and in the context of § 850.209(a)(1) they apply directly to a given *person of a country of concern* and not to an investment target’s holding companies or other members of a corporate group.

Section 850.209(a)(2)

Commenters made suggestions related to the scope of § 850.209(a)(2) or requested clarification of this paragraph’s application. Commenters discussed the costs related to conducting due diligence to determine whether § 850.209(a)(2) applies to a person receiving investment from a *U.S. person*. One commenter noted that a *U.S. person* may need to rely on an investment target to supply the information required to determine the applicability of § 850.209(a)(2). The Treasury Department has provided further information in the discussion of the knowledge standard (see discussion under Subpart A above) to address a “reasonable and diligent inquiry” in situations where a *U.S. person* may have no source other than an investment target to supply information necessary to determine the applicability of the Final Rule.

Several commenters requested that the Treasury Department clarify whether an investment in a *parent* or holding company would be defined as an indirect *covered transaction* only when a downstream entity meets one of the thresholds set forth in § 850.209(a)(2) and further requested that the Treasury Department provide additional guidance as to how certain transactions, such as acquisitions through special purpose vehicles, would be treated under the rule. These commenters also requested that the Treasury Department clarify that if the acquisition of a company that is not a *person of a country of concern* does not meet the thresholds in § 850.209(a)(2), then both the direct acquisition of the company and the indirect acquisition of its interest in its subsidiary are not *covered transactions*. One such commenter wrote that § 850.209(a)(2) would be “meaningless” unless the definition of an indirect *covered transaction* was clarified to exclude investments into targets that have subsidiaries that fall short of the financial thresholds specified in § 850.209(a)(2)(i) through (iv) because,

for example, “investing in a parent company outside a country of concern would be ‘indirectly’ investing in any of its subsidiaries that was a covered company, even if such a subsidiary only accounted for 1 percent of its revenues and expenses.”

The Treasury Department notes that the bright-line criteria set forth in § 850.209(a)(2) are for purposes of determining whether a *person* is a *covered foreign person* but are not intended to exclude the possibility that other transactions involving intermediary entities could be a *covered transaction* under § 850.210, and therefore the Treasury Department declines to categorically exclude from coverage any and all indirect transactions through *persons* falling outside of § 850.209(a)(2). As explained in the Proposed Rule and as further addressed in the Final Rule (see Note 1 to § 850.210), the definition of *covered transaction* includes indirect transactions, including when a *U.S. person* uses an intermediary entity or acquisition vehicle to engage in a transaction that would be a *covered transaction* if engaged in directly by the *U.S. person*. See the discussion of § 850.210 (*covered transaction*) below for additional discussion of an “indirect” *covered transaction*.

Furthermore, meaningful distinctions exist between the scope of § 850.209(a)(2) and an indirect *covered transaction* under § 850.210(a) in both the Proposed Rule and in the Final Rule. Section 850.209(a)(2) defines certain investment targets, wherever located, as *covered foreign persons* given the significance of their financial ties with one or more *covered foreign persons*. In such a case, absent an exception, a *U.S. person*’s acquisition of an equity interest in such entity is a *covered transaction*.

One commenter requested clarification as to whether the application of § 850.209(a)(2) “goes through the group or the portfolio company” as well as guidance as to the treatment of subsidiaries and affiliates of the company in which a *U.S. person* invests. Because this comment lacks specific information about the relationship between and among a “group,” a “portfolio company,” or “subsidiaries and affiliates,” the Treasury Department is unable to provide the specific information requested beyond the bright-line definitions provided in the Final Rule. As to the general topic of a *U.S. person* investment into a “group” but not a portfolio company, various parts of the Final Rule, including but not limited to § 850.209(a)(2), specify those scenarios in which an investment could be a

covered transaction even if the immediate investment target is not itself a *person of a country of concern* engaged in a *covered activity*.

One commenter asked whether, if a *U.S. person* owns an entity in a *country of concern* that is engaged in a covered national security technology or product, the *U.S. person* as well as the entity in a *country of concern* would be a *covered foreign person* and whether “the 50% rule described in the [Proposed Rule]” would be applicable. This query contains insufficient information about the relationships between and among the *U.S. person*, the other entity, and a *country of concern*—for example, information that would aid determination of whether an entity “in” a *country of concern* would meet the definition of a *person of a country of concern*, and information that would aid determination of whether the *U.S. person*’s relationship with the former entity would meet the definition of a *controlled foreign entity* in § 850.206—for the Treasury Department to provide specific guidance on the hypothetical given. However, as a general matter, § 850.209(a)(2) could apply to a *U.S. person* entity that meets the criteria in that provision regarding interest in, and financial metrics attributable to, a *covered foreign person*.

Two commenters requested additional guidance regarding how the financial metrics cited in the Proposed Rule, *i.e.*, revenue and operating expenses, are calculated for the purposes of the application of § 850.209(a)(2). The Treasury Department notes that Section 850.209(b) refers to an “audited financial statement,” and the Treasury Department anticipates that such statements, which typically include those financial metrics covered by § 850.209(a)(2), will have been prepared in accordance with the applicable accounting rules and conventions of the relevant jurisdiction. (The Treasury Department also notes that § 850.209(b) provides for alternatives in the event an audited financial statement is unavailable.)

Several commenters suggested that the Treasury Department attribute the requirement in § 850.209(a)(2) to a single entity, rather than aggregating among entities, or provide clarification for how aggregation would be applied. Additionally, commenters requested that the rule institute a de minimis threshold for a *person*’s vested interest in a *covered foreign person* that would narrow the scope of § 850.209(a)(2). Suggested approaches included de minimis thresholds for a *covered activity* (discussed above in connection with § 850.209(a)(1)) or a de minimis

threshold connected to the investment target’s ownership interest in a *covered foreign person*. One commenter suggested excluding from such calculations entities in which a *U.S. person* owns less than 10 percent of the outstanding voting power or equity because a transaction counterparty’s finances may aggregate revenues or expenses across a substantial number of unrelated companies and assets, while another suggested that any voting or equity interest under 25 percent held by an entity be excluded from the calculations under § 850.209(a)(2). One commenter suggested that as an alternative, the Treasury Department could draw on certain definitions from the CFIUS regulations related to controlling transactions and certain non-controlling, non-passive investments to more clearly explain when a *person* that is not a *covered foreign person* would have a requisite interest in a *covered foreign person* to qualify under this provision.

In response to the comments, the Treasury Department has modified § 850.209(a)(2) of the Final Rule to note that for the purposes of calculating whether one or more *persons of a country of concern* engaged in a *covered activity* exceed the financial thresholds enumerated in § 850.209(a)(2)(i) through (iv), only those *persons of a country of concern* engaged in a *covered activity* in which the relevant *person* directly or indirectly holds an interest specified in (a)(2) will be considered. Such an interest as specified in § 850.209(a)(2) is any of the following: a board seat on, a voting or equity interest (other than through securities or interests that would satisfy the conditions in § 850.501(a) if held by a *U.S. person*) in, or any contractual power to direct or cause the direction of the management or policies of such *person of a country of concern* engaged in a *covered activity*.

In response to comments on considerations for a *U.S. person* conducting due diligence to assess the application of § 850.209(a)(2), the Final Rule includes in the aggregation calculations of the financial thresholds in § 850.209(a)(2)(i) through (iv) only those *persons of a country of concern* (engaged in a *covered activity*) that account for at least \$50,000 (or equivalent) of the relevant financial metric of the *U.S. person*’s investment target or relevant counterparty (such as a JV partner). The \$50,000 and above threshold for inclusion in the calculation for any given financial metric is intended to ensure there is a meaningful financial relationship between the investment target and a *person of a country of concern* and that

de minimis contributions to any of the financial metrics are not required to be included, to address commenter's stated concerns about the diligence burden of the calculations required by § 850.209(a)(2)(i) through (iv).

For example, if an investment target holds a board seat on a *person of a country of concern* engaged in a *covered activity* and such *person of a country of concern* contributed \$100,000 to the investment target's revenue for the most recent year, this contribution will be included in determining whether the 50 percent threshold in § 850.209(a)(2)(i) is exceeded. However, if an investment target holds a board seat on a *person of a country of concern* engaged in a *covered activity* and such *person of a country of concern* contributed \$25,000 to the investment target's revenue for the most recent year, this contribution will not be included in determining whether the 50 percent threshold in § 850.209(a)(2)(i) is exceeded. Each metric will be evaluated independently in applying this rule. For example, if an investment target holds a board seat on a *person of a country of concern* engaged in a *covered activity* and such *person of a country of concern* engaged in a *covered activity* contributed \$25,000 of the investment target's revenue for the most recent year and accounted for \$100,000 of the investment target's capital expenditure for the most recent year, the revenue contribution will not be considered for purposes of applying § 850.209(a)(2)(i) but the capital expenditure allocation will be considered for purposes of applying § 850.209(a)(2)(iii).

The Treasury Department determines that the above change will make necessary information easier for a *U.S. person* to ascertain, and addresses issues raised by commenters regarding due diligence considerations. Such minimum financial thresholds on which contributions are to be included in the aggregations may reduce the number of *persons of a country of concern* engaged in a *covered activity* that must be considered for the purposes of aggregating across such *persons of a country of concern* with respect to a given financial metric calculation, and, consistent with the intent of the provision to capture investment targets or transaction counterparties with substantial ties to *persons of a country of concern* engaged in *covered activities*, such thresholds help ensure that only significant financial ties are included.

The Treasury Department declines to adopt a de minimis threshold, as suggested by some commenters, for an investment target or transaction counterparty's equity or voting interest

in a *person of a country of concern* engaged in a *covered activity*. Thresholds such as 10 percent or 25 percent, as suggested by some commenters, could exclude downstream investments in a *covered foreign person* with which the immediate investment target has a significant relationship. A minimum financial threshold, rather than excluding entities based on an investment threshold, addresses this issue, and additionally and independently, such a financial threshold is comparatively difficult to manipulate for the purpose of avoiding or evading this provision. The Treasury Department also declines to incorporate the suggested definitions from the CFIUS regulations given the differences in these programs. For example, the concept of "control" in the CFIUS context is a heavily fact dependent determination that is assessed by CFIUS for every transaction filed with CFIUS, whereas the Treasury Department uses a threshold approach in § 850.209(a)(2) for ease of administrability for transaction parties who will be determining coverage under this rule themselves.

One commenter requested that for the purposes of determining *covered foreign person* status under § 850.209(a)(2), a *person* who receives more than 50 percent of revenue or net income from publicly traded securities, or index funds, mutual funds, exchange-traded funds, or similar instruments (including associated derivatives) should be excepted. The Treasury Department views the likelihood of a *U.S. person* transferring intangible benefits in such a situation where an investment target's only relationship with a *person of a country of concern* engaged in a *covered activity* is the holding of certain securities identified in the exception set forth in § 850.501(a) to be similar to the situation where a *U.S. person* directly acquires or holds such securities. The Treasury Department has therefore modified § 850.209(a)(2) in the Final Rule to specify that, for purposes of determining whether an entity holds an equity or voting interest within the meaning of § 850.209(a)(2), the holding of securities or interests that would satisfy the conditions in § 850.501(a) if held by a *U.S. person* will not be included.

The Treasury Department has made additional changes to § 850.209(a)(2) to reflect comments and enhance clarity. These include the removal of an explicit reference to "one or more contractual arrangements, including, for the avoidance of doubt, variable interest entities" from the Proposed Rule, which modified the reference to a *person's*

having "any power to direct or cause the direction of the management or policies of" a *person of a country of concern* engaged in a *covered activity*. This change is to enhance readability and is not intended to alter the meaning of this provision. The Treasury Department emphasizes that "contractual power to direct or cause the direction of the management or policies" can be granted through variable interest entities.

As modified in the Final Rule, § 850.209(a)(2) continues to focus on the significance of the financial relationship between an investment target and one or more *covered foreign persons* while addressing commenter concerns related to diligence of the downstream entities' activities. In setting the relevant threshold for financial metrics between the investment target and *persons of a country of concern* engaged in a *covered activity* at more than 50 percent, the Treasury Department expects that through a "reasonable and diligent inquiry" a *U.S. person* will be able to determine whether a potential investment target meets the applicable conditions. The Treasury Department understands that multiple entities may need to be considered in this aggregation, but investment targets with significant financial ties with downstream entities, as demonstrated by meeting any of the thresholds in § 850.209(a)(2)(i)-(iv), should be able to answer questions from a *U.S. person* investor during due diligence about the application of § 850.209(a)(2), and/or to provide relevant representations and warranties. The Treasury Department has also made additional changes to § 850.209(a)(2) for clarity; no additional substantive changes were intended.

One commenter suggested that § 850.209(a)(2) consider only consolidated revenue and net income because, among other things, they are easier to obtain in the ordinary course of business than the other metrics. The Treasury Department declines to adopt this change because information about capital expenditure and operating expenses should generally be available. In addition, and independently, considerations related to the ease of obtaining this information are outweighed by the national security concerns that would be implicated by not covering an entity under § 850.209(a)(2) that incurs more than 50 percent of its capital expenditure or operating expenses through a *covered foreign person*. In addition, and independently, the Treasury Department wishes to address situations in which a *U.S. person* is investing in an intermediate entity that acts as a vehicle for investment into early-stage

companies engaged in capital-intensive *covered activities*. Such companies may generate little or no revenue or income in their early stages, and yet the Final Rule is designed to prevent the transfer of *U.S. person* intangible benefits to such investment targets given the significance of the financial ties that do exist between the *U.S. person* and the *person of a country of concern* engaged in a *covered activity*.

One commenter suggested that the Final Rule “harmonize” the thresholds in § 850.209(a)(2) with other parts of the rule, such as the threshold for determining control in the case of a *controlled foreign entity*, in order to avoid confusion. The Treasury Department has set bright-line thresholds in various provisions in the Final Rule and each threshold set forth in the Final Rule serves a distinct function and is underpinned by distinct considerations, such that adjusting them to be identical would not serve the policy goals of the Final Rule.

One commenter stated that this provision aligned with the policy goals of the Proposed Rule and suggested that because the thresholds in § 850.209(a)(2) are based on the most recent available financial statement, *U.S. persons* should have a grace period to reduce their financial ties with *covered foreign persons*. Because the analysis to determine the application of § 850.209(a)(2) must occur at the time of a transaction, the Treasury Department does not determine that a grace period is necessary; if a transaction would be a *prohibited transaction*, it should not be entered into, while an investment that is permitted at the time of the transaction does not need to be divested later due merely to post-transaction changes in an investment target’s finances or activities of which the *U.S. person* did not have *knowledge* at the time of the investment. In addition, and independently, an entity into which *U.S. person* investment may be a *covered transaction* under § 850.209(a)(2) that wishes not to meet the criteria of § 850.209(a)(2) can take as little or as much time as it needs to reduce its underlying exposure to relevant *covered foreign person(s)*, obviating the need for a set grace period.

Commenters also raised suggestions relating to the time at which a determination of the applicability of § 850.209(a)(2) is made. One commenter noted that the financials of a given target company could change over time, which could complicate compliance for investors that wish to participate in multiple funding rounds and could “have a dramatic chilling effect.” The commenter also suggested exempting

subsequent funding rounds from the notification requirements absent a material change or allowing an amendment of a prior notification. In response to this comment, the Treasury Department clarifies that because the analysis to determine the application of § 850.209(a)(2) must occur at the time of a transaction using the information set forth in § 850.209(b), in the context of a single investment, fluctuations in an investment target’s finances prior or subsequent to the relevant time period are not relevant to the operation of § 850.209(a)(2). With respect to *notifiable transactions*, the Treasury Department is interested in understanding the volume and nature of investments involving the identified technologies and products and therefore exempting or excepting subsequent funding rounds from the notification requirement will not serve the objectives of the Outbound Order. As discussed more below (see *content of notifications*), the Treasury Department is exploring the ability to allow follow-on notifications involving the same *U.S. person* and *covered foreign person* to be able to incorporate information from a prior notification within the electronic system for submission of notifications.

The Treasury Department declines to create an exemption or exception for a transaction simply because it is part of a subsequent funding round, in § 850.209(a)(2) or elsewhere. Such an exemption or exception could reduce U.S. Government visibility into certain follow-on investments and open a loophole by permitting investments that would otherwise be *prohibited transactions*.

One commenter suggested that the measurements set forth in § 850.209(a)(2) be applied at the time of final closing in the case of a closed-end fund, but at the time of an investment by a *U.S. person* in the case of an open-end fund. Due to the ambiguities such an approach might introduce, as well as the potential for evasion or avoidance that such a differentiated approach could create, the Treasury Department declines to adopt this suggested change in the Final Rule.

One commenter requested that the Treasury Department consider making *U.S. person* transactions in entities meeting the criteria of § 850.209(a)(2) notifiable only, even in cases where an underlying entity is engaged in a *covered activity* enumerated in § 850.224 and a prohibition would therefore otherwise apply. The Treasury Department declines to adopt this suggestion, as doing so would open a significant loophole whereby the intercession of an intermediate entity

could, in certain circumstances, be used to convert an otherwise *prohibited transaction* into a *notifiable transaction*, undermining the national security objectives that motivate prohibition of certain transactions.

One commenter suggested striking § 850.209(a)(2) in its entirety. Among the reasons given for this suggestion is that a *U.S. person* scoped in as a *covered foreign person* by this prong may itself not be directly engaging in a *covered activity*, and because this coverage could have adverse effects on U.S. companies, including those with important commercial sales relationships or technology licensing agreements with a *person of a country of concern* that is engaged in a *covered activity*. This commenter suggested replacing the Proposed Rule’s § 850.209(a)(2) language with the following: “(2) Any entity in which a foreign national, foreign government, foreign entity, or another covered foreign person holds a 50% ownership interest and engages in a covered activity.” In response to this comment, the Treasury Department notes that in order for a *U.S. person* to be scoped in as a *covered foreign person* under § 850.209(a)(2), the *U.S. person* would first have to have a specified relationship with a person of a country of concern that is engaged in a covered activity and second, also be significantly financially connected, as discussed above. The mere fact that a U.S. company has commercial sales relationships or technology licensing agreements, without more, is unlikely to meet the criteria. However, where the criteria under § 850.209(a)(2) is met even in the case of a *U.S. person*, there is a policy desire to address that situation given there is a meaningful relationship with, one or more *persons of a country of control* engaged in *covered activities*. This approach addresses both the potential for evasion and accounts for the range of geographic and organizational structures commonly used by multinational firms to manage their business activities. As one commenter stated, “most investments are made through holding companies and not directly in operating companies,” underscoring the importance of retaining this provision. Further, the alternate definition for § 850.209(a)(2) suggested by the commenter referring to, e.g., a “foreign national” or “foreign person,” could regulate transactions that involve a *person* of a third country but do not involve a *person* with any relationship to a *person of a country of concern* and therefore exceeds the authorities granted

to the Treasury Department by the Outbound Order.

Commenters noted the potential extraterritorial application of § 850.209(a)(2). One commenter stated that a third-country entity “should not be regarded as the same as a person of a country of concern.” Another commenter stated that including entities incorporated outside of a *country of concern* but that have subsidiaries in a *country of concern* could limit investments that draw manufacturers of semiconductor components and suppliers away from the PRC market, negatively impacting U.S. competitive and national security interests. The Treasury Department assesses that certain transactions with an entity that is not a *person of country of concern* engaged in a *covered activity* but nevertheless has an interest in, as well as a significant financial relationship with, a *person of country of concern* engaged in a *covered activity*, have a similar potential of exacerbating the threat identified in the Outbound Order as do transactions with *persons of a country of concern* engaged in a *covered activity*, and notes that § 850.209(a)(2) addresses a common transaction structure whereby investments are made into *parent* companies or holding companies. In addition, and independently, § 850.209(a)(2) does not, in fact, treat non-*country of concern* entities the same as *country of concern* entities, because an entity that is not a *person of a country of concern*, and engages in a *covered activity*, would not be a *covered foreign person* under § 850.209(a)(1) of the Final Rule, whereas a *person of a country of concern* would be.

One commenter stated that § 850.209(a)(2) may prevent a *U.S. person* from making investments in the national security interest of the United States, and multiple commenters suggested the Treasury Department may wish to create a licensing regime to facilitate the approval of investments where appropriate. In response, the Treasury Department notes that a *U.S. person* could seek a national interest exemption from the notification requirement or prohibition set out in the Final Rule by following the process described in § 850.502 and further discussed below. The Treasury Department anticipates that this exemption of a *covered transaction* where in the national interest would be granted by the Secretary in exceptional circumstances, unlike a licensing regime which is typically more frequent.

The Final Rule also makes changes to § 850.209(b), which establishes how a person’s revenue, net income, capital

expenditure, and operating expenses are to be ascertained. One commenter suggested that where an annual financial statement is unavailable, a *U.S. person* could be permitted to rely on independent appraisals or good faith estimates. The Treasury Department has adopted language similar to this suggestion in § 850.209(b)(1) of the Final Rule, as it pragmatically addresses situations in which no financial statement is available. Under § 850.209(b)(1) of the Final Rule, for purposes of identifying any of a person’s overall revenue, net income, capital expenditure, operating expenses, and the relevant contributions of one or more *covered foreign persons*, calculations are to be based on an audited financial statement from the most recent year. If an audited financial statement is not available, the most recent unaudited financial statement is to be used instead. If no financial statement is available, an independent appraisal is to be used instead. If no independent appraisal is available, a good-faith estimate is to be used instead.

This provision is intended to apply independently to the ascertainment of each metric or figure. For example, if overall revenue is available in an audited financial statement from the most recent year, but the specific contributions of *persons of a country of concern* engaged in a *covered activity* are only available via good-faith estimates, then an audited financial statement is to be used to calculate overall revenue, but a good-faith estimate is to be used to calculate the individual revenue contributions of such *persons of a country of concern* engaged in a *covered activity*.

The Final Rule also adds § 850.209(b)(2) to address the calculation of exchange rates for the purpose of determining whether the contribution of a *person of a country of concern* engaged in a *covered activity* falls beneath the \$50,000 (or equivalent) threshold in cases where the relevant amounts were not in U.S. dollars or where a financial statement did not already convert such figures into U.S. dollar equivalent. In such cases, the most recent published rate of exchange available on the Department of the Treasury’s website is to be used instead. Such rates are published quarterly and are not spot exchange rates.

Finally, the Final Rule adds a Note 1 to § 850.209 to clarify that references in that section to revenue, net income, capital expenditure, or operating expenses refer to overall revenue, net income, capital expenditure, or operating expenses, as applicable, without subtracting amounts

attributable to a *person of a country of concern* engaged in a *covered activity* of less than \$50,000 (or equivalent).

A number of commenters requested the Treasury Department reconsider its decision in the Proposed Rule not to issue a list of entities that are *covered foreign persons*. The Treasury Department has further considered these commenter requests and declines to issue such a list in the Final Rule. Compiling and then publishing a list of *covered foreign persons* would be challenging given that any such list would likely be subject to frequent change and likely underinclusive, which would undermine the national security goals of the Outbound Order. For example, such a list may not capture early-stage companies that would meet the definition of a *covered foreign person* but may not have come to the attention of the Treasury Department. Even if such a list were illustrative or non-exhaustive, market actors may incorrectly determine that entities not listed are therefore not *covered foreign persons* and may decline to undertake the “reasonable and diligent inquiry” described in the Final Rule. Another independent reason for this decision is that providing a list of *covered foreign persons* could also result in attempts to evade the Final Rule through corporate restructuring, creating a greater enforcement burden, undermining the national security goals of the Outbound Order, and adding the burden of maintaining such a list. Additionally, a list of entities may be misleading, because some investments in a given entity may be permitted (e.g., a purchase of a small number of publicly traded shares in such entity) while another investment in the same entity (e.g., a controlling stake) may be prohibited. Finally, the Treasury Department has determined that in the case of early-stage companies, market actors making investments have access to more detailed and up to date information than the U.S. Government and are therefore in a better position to determine whether a transaction is covered under the Final Rule, including whether any *covered foreign person* is involved.

Covered Foreign Person—Final Rule Summary

The definition of *covered foreign person* in the Final Rule describes three sets of circumstances that will cause a *person* to be a *covered foreign person*.

First, under § 850.209(a)(1), a *person* is a *covered foreign person* if it is a *person of a country of concern* that is engaged in a *covered activity*.

Second, under § 850.209(a)(2), a *person* is a *covered foreign person* even

if it is not itself a *person of a country of concern* or engaged in a *covered activity* but has a particular relationship with a *person of a country of concern* that is engaged in a *covered activity*. The relationship must meet two conditions. First, the relevant person must hold a specified interest in a *person of a country of concern* that engages in a *covered activity*. That interest can take the form of a voting interest or equity interest (other than through securities or interests that would satisfy the conditions in § 850.501(a) if held by a *U.S. person*), board seat (voting or observer), or the contractual power to direct or cause the direction of the management or policies of the *person of a country of concern* (this could occur, for example, through any contractual arrangement with respect to a variable interest entity). Second, if there is such an interest, then more than 50 percent of the first person's revenue, net income, capital expenditure, or operating expenses need to be attributable to the *person of a country of concern* for § 850.209(a)(2) to apply. The first person also meets this condition if the person holds a specified interest in more than one *person of a country of concern* engaged in a *covered activity*, and more than 50 percent of the first person's revenue, net income, capital expenditure, or operating expenses is attributable to such *persons of a country of concern*, in aggregate. However, any contributions of less than \$50,000 (or equivalent) to any given financial metric from any given *person of a country of concern* engaged in a *covered activity* are not included in the relevant calculations as they relate to contributions from such persons toward the relevant 50 percent thresholds.

Relatedly, the Treasury Department intends the threshold of more than 50 percent of any of the financial metrics to be evaluated independently, not in combination. For example, assuming no other relevant circumstances, if a *person* holds a specified interest in a *person of a country of concern* and such *person of a country of concern* represents 20 percent of the first person's revenue and 31 percent of its capital expenditure, these metrics will be evaluated independently and not combined to equal 51 percent.

Under § 850.209(a)(2), the Treasury Department intends to capture those entities that, while not directly engaged in a *covered activity* themselves, are significantly financially connected to entities that are engaged in a *covered activity*. The Treasury Department considers that if more than 50 percent of an investment target's revenue, net income, capital expenditure, or

operating expense is attributable to one or more *persons of a country of concern* that are engaged in a *covered activity*, the intangible benefits associated with a *U.S. person's* investment in the target are likely to be conveyed to such *persons of a country of concern*. Accordingly, the Treasury Department considers that the investment target itself shall be treated as a *covered foreign person*. Moreover, in setting the threshold for financial metrics between the investment target and *persons of a country of concern* engaged in a *covered activity* at more than 50 percent, the Treasury Department expects that through a "reasonable and diligent inquiry" a *U.S. person* will be able to determine whether a potential investment target meets the applicable conditions.

Lastly, under § 850.209(a)(3), a *person of a country of concern* will be a *covered foreign person* by virtue of its participation in a joint venture with a *U.S. person* if such joint venture is engaged in a *covered activity*. That is, even though the *person of a country of concern* may not be engaged in a *covered activity* itself, the fact of its participation in a joint venture that is engaged in a *covered activity* would cause the person to be a *covered foreign person*. Consistent with the policy objectives of the Outbound Order, this approach seeks to focus on transactions where there is a likelihood of the transfer of intangible benefits from a *U.S. person* to a *person of a country of concern* in connection with a *covered activity*.

§ 850.210—Covered Transaction

The Proposed Rule defined a *covered transaction* to include a *U.S. person's* direct or indirect:

- Acquisition of an equity interest or *contingent equity interest*, or their equivalent, in a *covered foreign person*;
- Provision of debt financing convertible to an equity interest in a *covered foreign person* or provision of debt financing that affords the lender certain management or governance rights in a *covered foreign person*;
- Conversion of a *contingent equity interest* or convertible debt in a *covered foreign person*;
- Greenfield investment or certain other corporate expansions that either will establish a *covered foreign person*, or will cause an existing *person of a country of concern* to engage in a *covered activity*;
- Entrance into a joint venture, wherever located, with a *person of a country of concern* where the joint venture will undertake a *covered activity*; and

- Investment as an LP into a non-*U.S. person* pooled investment fund that invests in a *covered foreign person*.

Importantly, for each of the above transaction types, the Proposed Rule included a specific requirement for what a *U.S. person* would have needed to know or intend for a transaction to be a *covered transaction*. As set forth in the Proposed Rule, a transaction that otherwise had the attributes of a *covered transaction* ordinarily would have been treated as a *covered transaction* only if the relevant *U.S. person* knew at the time of the transaction that the transaction involved, or would have resulted in the establishment of, a *covered foreign person* (or would have resulted in a *person of a country of concern's* engagement in a new *covered activity*). *Knowledge* for this purpose included both actual knowledge and "reason to know" of the relevant facts or circumstances, as set forth in § 850.216.

Covered Transaction—General Scope

A few commenters expressed the view that the Proposed Rule expanded the scope of transactions that would have been considered *covered transactions* as compared to the ANPRM, with one such commenter noting the inclusion of brownfield investment and joint ventures in particular. The scope of *covered transactions* in the Proposed Rule addressed a set of circumstances in which a *U.S. person* could have provided intangible benefits to a *covered foreign person*. Brownfield investment was included within the scope of the Proposed Rule because the Treasury Department assessed that such an investment, that is, an investment into an existing entity that shifts its operations into a new *covered activity*, risked undermining the national security goals of the Outbound Order. Similar to brownfield investment, a joint venture was included within the scope of *covered transaction* to cover situations in which the transaction structure presented the opportunity and incentive for the transfer of intangible benefits from a *U.S. person* to a *person of a country of concern* through the joint venture.

Acquisition of Equity Interest or Contingent Equity Interest; Conversion of Contingent Equity Interest

The proposed definition of *covered transaction* in the Proposed Rule included the acquisition of an equity interest (or equivalent) in a *covered foreign person* and the acquisition of a *contingent equity interest*, which was defined in 850.205 as a financial instrument that did not constitute an

equity interest at the time of the *covered transaction* but was convertible into, or provided the right to acquire, an equity interest in a *covered foreign person* upon the occurrence of a contingency or defined event.

The proposed definition of *covered transaction* included as a separate basis of coverage the conversion of a *contingent equity interest* or convertible debt in a *person* that the *U.S. person* knew at the time of conversion was a *covered foreign person*. As discussed in the Proposed Rule, with respect to a *notifiable transaction*, the policy objective of including the conversion of a contingent equity or convertible debt in the definition of *covered transaction* was to gain visibility into the circumstances in which contingent interests in a *covered foreign person* would convert. Including the conversion of a *contingent equity interest* or convertible debt in the scope of *covered transaction* would also have addressed circumstances where the investment target or borrower was not a *covered foreign person* at the time of the acquisition of the relevant interest but was a *covered foreign person* at the time of conversion of such interest (e.g., as a result of newly engaging in a *covered activity* or the target's new relationship with a *person of a country of concern* engaged in a *covered activity*).

The Treasury Department received a number of comments in connection with § 850.210(a)(1) and (3) of the Proposed Rule, which covered the acquisition or conversion of a *contingent equity interest*. One commenter indicated that § 850.210(a)(1) of the Proposed Rule, via the coverage of indirect acquisitions, could apply to LP investments into U.S. funds that are not captured by § 850.210(a)(6). The Final Rule clarifies in Note 1 to § 850.210 that for purposes of § 850.210(a)(1), a *U.S. person* is not considered to have indirectly acquired an equity interest or *contingent equity interest* in a *covered foreign person* when the *U.S. person* acquires an LP interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund and that fund then acquires an equity interest or *contingent equity interest* in a *covered foreign person*. Accordingly, absent other facts (such as an intent to evade this rule), a *U.S. person* LP's investment into a *U.S. person* pooled investment fund would not itself be assessed to be a *covered transaction*. The *U.S. person* pooled investment fund's transaction with or involving a *covered foreign person* is, however, covered by this rule if such a transaction meets the definition of a *covered transaction*, and

hence the *U.S. person* pooled investment fund is responsible for making any required notification and for refraining from engaging in any *prohibited transaction*. The Treasury Department further clarifies that § 850.210(a)(6), and not § 850.210(a)(1), describes the types of investment made as an LP in a pooled investment fund that are defined as a *covered transaction*, namely acquisitions of an LP interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund where the fund is not a *U.S. person* and where the other criteria set out in § 850.210(a)(6) are met.

Several commenters requested that the Treasury Department either delete or clarify the phrase “interest equivalent to an equity or *contingent equity interest*.” In response, the Treasury Department is removing references to an “interest equivalent to an equity or *contingent equity interest*” from § 850.210(a)(1) and (3) of the Final Rule.

One commenter stated that the Treasury Department should revise the definition of a *covered transaction* such that it does not include a transaction whereby a *U.S. person* underwriter of an initial public offering (IPO) takes a “short-term residual position in the issuer's shares in the event of a shortfall in demand” where the issuer is a *covered foreign person* or otherwise takes possession of the shares of a *covered foreign person* as a market-maker in connection with an IPO. (Other commenters requested that similar transactions be *excepted transactions* in the rule; see also discussion of an *excepted transaction* below.) In response to this comment, the Treasury Department emphasizes that a *U.S. person's* acquisition of an equity interest in a *covered foreign person* that is not yet publicly traded for the purpose of facilitating an IPO, such as a purchase with the intent to create a market for the security or to resell the security on a secondary market (e.g., as part of an underwriting arrangement), is a *covered transaction*. The Treasury Department declines to modify the definition of *covered transaction* to exclude such fact patterns, which combine the acquisition of an equity interest with the transfer of intangible benefits, including enhanced standing and prominence, managerial assistance, access to investment and talent networks, market access, and enhanced access to additional financing. However, absent additional facts, the provision of a service ancillary to an IPO that does not include the acquisition of an equity interest (or other interests set forth in

the definition of § 850.210) is not a *covered transaction*.

The Treasury Department is modifying the definition of *contingent equity interest* at § 850.205 of the Final Rule, which is referenced in § 850.210(a)(1) and (3). (See discussion above under *Contingent equity interest*.) The definition of *contingent equity interest* in the Final Rule refers to a “financial interest,” rather than a “financial instrument” as in the Proposed Rule. This change is intended to more accurately reflect the Treasury Department's intent to cover the acquisition or conversion of interests that are convertible into an equity interest or provide the right to acquire equity interests. The definition of *contingent equity interest* in the Final Rule also clarifies that debt can constitute a financial interest that is convertible into, or provides the right to acquire, an equity interest. Because the definition of a *contingent equity interest* now explicitly refers to debt, the reference to the “conversion of debt to an equity interest” has been removed from § 850.210(a)(3) of the Final Rule. Accordingly, to avoid duplication, the Final Rule deletes § 850.210(a)(2)(i) (i.e., the reference to the provision of debt financing that is convertible to an equity interest, as was included in the Proposed Rule) since such a transaction is now covered in the Final Rule by § 850.210(a)(1) as an acquisition of a *contingent equity interest*.

Several commenters stated that the rule should not apply to convertible debt financing more broadly or, in the alternative, should include a safe harbor for any debt financing provided prior to the effective date of the rule. One commenter recommended that debt financing should be a *covered transaction* only if the borrower/recipient receives proceeds from the transaction or if the debt automatically converts upon the occurrence of a specific event. One commenter indicated appreciation for the Proposed Rule's clarity that the acquisition of a *contingent equity interest* and subsequent conversion of that interest are separate *covered transactions*. Another commenter highlighted that because the acquisition of a *contingent equity interest* and the conversion of that interest are each a *covered transaction*, a *U.S. person* investor may find itself unable to convert its interest if an investment target that is a *person of a country of concern* begins engaging in a *covered activity* described in § 850.224 (which defines a *prohibited transaction*) after the interest was initially acquired, such that the conversion would now be prohibited.

Another commenter asserted that covering both the acquisition and the conversion of a contingent interest would have a chilling effect on acquisitions of contingent equity that would be *notifiable transactions*, as a *U.S. person* investor would be uncertain whether it would be able to convert its interest in cases in which the *covered foreign person* investment target subsequently pivots to a *covered activity*. The commenter also noted that venture capital firms generally begin providing non-monetary benefits as soon as they acquire a *contingent equity interest* and thus, any conversion would not trigger the provision of additional intangible benefits. For these reasons, the commenter requested that the Treasury Department provide a safe harbor (or, in the alternative, a licensing regime) that would permit conversion of a *contingent equity interest* provided that, at the time the contingent interest was acquired, the *U.S. person* did not have *knowledge* that the target intended to engage in *covered activities* that would make conversion of the instrument prohibited.

The Treasury Department recognizes that the activities of an investment target in which a *U.S. person* holds a *contingent equity interest* could change during the period between a *U.S. person's* acquisition and conversion thereof, and that this could cause a *U.S. person* either to decide not to enter into an investment or to be unable to convert an existing contingent interest. To avoid a situation in which a *U.S. person* is prohibited from converting a *contingent equity interest* that was obtained prior to the effective date of the Final Rule, the Final Rule provides in § 850.210(a)(3) that conversion of a *contingent equity interest* into an equity interest in a person that the *U.S. person knows* at the time of conversion is a *covered foreign person* is a *covered transaction* only where the *contingent equity interest* was acquired by the *U.S. person* on or after the effective date of the Final Rule. Permitting a *U.S. person* to acquire an equity interest in a *covered foreign person* engaged in one of the specific *covered activities* described in the definition of a *prohibited transaction* as a result of converting a *contingent equity interest* acquired on or after the effective date of the Final Rule would create a significant loophole that could be exploited and would run counter to the goals of the Outbound Order. Like a *U.S. person* that has obtained an equity interest directly, a *U.S. person* that has obtained an equity interest as a result of converting a *contingent equity interest* is positioned to provide

intangible benefits that often accompany investments by *U.S. persons* and that help companies succeed. Given this outcome, neither a safe harbor beyond the cutoff date for acquisitions specified above and in the Final Rule nor a licensing regime would be appropriate. The Treasury Department also recognizes that an investor that acquires a *contingent equity interest* in an investment target may be able to obtain contractual assurances from the investment target as to the nature of its future activities, addressing a situation where the activities of the investment target change such that the *U.S. person* would be unable to convert its interest and the target could obtain a windfall. In response to one commenter's contention that venture capital firms generally begin providing non-monetary benefits as soon as they acquire a *contingent equity interest*, even if this statement is descriptively correct as it relates to some investments, it does not mean that the Final Rule should not also cover conversions of contingent interests given the direct channel for the transfer of intangible benefits that such conversions establish between a *U.S. person* and a *covered foreign person* in many transaction structures. Accordingly, the Treasury Department declines to adopt such a recommendation.

Provision of Debt Financing

The Proposed Rule provided that a *U.S. person's* provision of a loan or similar debt financing arrangement to a person that the *U.S. person* knew at the time of the provision was a *covered foreign person* would have been a *covered transaction* when the debt financing was convertible to an equity interest or afforded or would have afforded the *U.S. person* the right to make management decisions with respect to or on behalf of the *covered foreign person* or the right to appoint members of the board of directors (or equivalent) of the *covered foreign person*. The intent of this provision was to capture lending by a *U.S. person* lender only where such lending involved the acquisition of equity or equity-like rights by the *U.S. person* lender with respect to a *covered foreign person*.

The Proposed Rule explained that while the issuance of debt secured by equity in a *covered foreign person* would not, absent other circumstances, have been a *covered transaction*, foreclosure on collateral that constituted an equity interest in a *covered foreign person* would have constituted the acquisition of an equity interest under

the Proposed Rule and would have been a *covered transaction*.

Several commenters provided input on § 850.210(a)(2) of the Proposed Rule. Several commenters focused on a scenario whereby a *U.S. person* lender issues debt for which equity is pledged as collateral and forecloses on that collateral at some subsequent point. Some commenters urged that the rule not apply to either debt financing secured by equity or to foreclosure on such equity. One commenter requested the Final Rule permit *U.S. lenders* to foreclose on or restructure existing debt that may be otherwise prohibited if the lender provides a notification under the program and attempts to divest as soon as practicable. One commenter suggested that the Treasury Department clarify that a loan or similar debt financing that is secured using equity held as collateral not be considered "convertible to an equity interest" under § 850.210(a)(2)(i). One commenter indicated appreciation for the Proposed Rule's clarity that foreclosure on equity in a *covered foreign person* that secures debt would have been a *covered transaction*. A few commenters recommended that the Treasury Department make explicit in the rule that foreclosure on equity used as collateral for debt is not a *covered transaction*.

One commenter noted that the Proposed Rule could have limited the ability of *U.S. persons* to create supplier relationships with counterparts in whom investment was not otherwise prohibited by the Proposed Rule—e.g., where convertible equity interests were used for purposes of commercial risk mitigation—and requested that supply contracts secured through convertible equity interests be carved out of the rule.

Other commenters requested that the rule not apply to secondary debt market transactions involving debt secured by equity. A few commenters highlighted that purchasers in the debt market do not have access to diligence materials or the power to negotiate representations from the underlying issuer, while another commenter stated that secondary debt market transactions should be carved out because the borrower would not receive any proceeds from that secondary transaction.

Commenters also discussed the description in § 850.210(a)(2)(ii) of the Proposed Rule regarding a lender's ability to make management decisions. Several commenters argued that when a lender seeks to restructure a delinquent loan, for example to change the borrower's management or appoint a

board member, such actions should not be considered a *covered transaction*. Another commenter sought clarification regarding the phrase “make management decisions” and inquired as to whether this language would encompass standard debt covenants. The commenter asked that either such covenants be carved out of the rule or that the rule provide further clarity with respect to what activities constitute “mak[ing] management decisions.” In response to the above comments, the Final Rule contains changes to § 850.210(a)(2) as well as to Note 2 to § 850.210. Note 2 to § 850.210 of the Final Rule clarifies that neither the issuance of debt financing secured by equity collateral nor the acquisition of such secured debt on the secondary market is an “acquisition of an equity or *contingent equity interest*” and hence will not, absent other facts, constitute a *covered transaction*. That note also further clarifies, however, that foreclosure on collateral where the debtholder takes possession of the pledged equity does constitute an acquisition of an equity interest. This is so because where a *U.S. person* obtains an equity interest in a *covered foreign person*, whether as a result of the conversion of a convertible interest or foreclosure on collateral that was pledged as security, the *U.S. person* assumes the position of an equity holder in the *covered foreign person* and therefore has the opportunity and incentive to provide the types of intangible benefits that the Outbound Order and this rule are intended to address.

As such, foreclosure on equity taken as collateral continues to be considered an acquisition of equity for purposes of § 850.210. However, in response to relevant comments, Note 2 further clarifies that foreclosure on collateral where the *U.S. person* does not know at the time of issuing or acquiring the secured debt that the pledged equity was in a *covered foreign person* does not constitute a *covered transaction*. This addresses the concerns raised by commenters that a debtholder may be prevented from foreclosing on equity that was pledged as collateral if the entity whose equity was pledged was not engaged in a *covered activity* at the time the debt financing was provided but pivots into a *covered activity* while the debt is outstanding. With this change, foreclosure on equity pledged as collateral will constitute a *covered transaction* when a *U.S. person* has *knowledge* at both the time of the issuance or acquisition of the secured debt, and at the time of foreclosure, that

the equity is that of a *covered foreign person*.

Further, as highlighted by the comments, the Treasury Department does not intend to define as a *covered transaction* foreclosure on equity that was taken as collateral prior to the effective date of the Final Rule. As such, Note 2 to § 850.210 of the Final Rule clarifies that foreclosure on equity pledged prior to the effective date of the Final Rule as collateral for secured debt is not a *covered transaction*. Therefore, “existing” debt as highlighted by one commenter, *i.e.*, a convertible interest acquired in connection with debt financing provided prior to the effective date of the Final Rule, could be restructured in ways that involve the conversion of such an interest without triggering the definition of a *covered transaction*.

The Treasury Department agrees with commenters’ request for clarification of the Proposed Rule’s reference to “mak[ing] management decisions” in § 850.210(a)(2)(ii). The Final Rule revises § 850.210(a)(2) to specify that the provision of debt financing to a *person* that the *U.S. person* knows at the time of the provision is a *covered foreign person* is a *covered transaction* where the debt financing affords or will afford the *U.S. person* an interest in profits of the *covered foreign person*, the right to appoint members of the board of directors (or equivalent) of the *covered foreign person*, or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan. In the Final Rule, the Treasury Department does not intend to cover debt financing unless it has these equity-like characteristics or is convertible into an equity interest. As noted above, to avoid duplication in light of the revision in the Final Rule to the definition of *contingent equity interest* in § 850.205, the Final Rule removes from § 850.210(a)(2) the reference to the provision of debt financing that is convertible to an equity interest, as was included in the Proposed Rule, since such a transaction is covered in the Final Rule by § 850.210(a)(1) as an acquisition of a *contingent equity interest*.

Greenfield or Brownfield Investment

Under § 850.210(a)(4) of the Proposed Rule, the definition of *covered transaction* included a *U.S. person*’s acquisition, leasing, or development of operations, land, property, or other assets in a *country of concern* when the *U.S. person* knew that such acquisition, leasing, or development would, or the *U.S. person* intended it to, either (1) establish a *covered foreign person*, such

as the acquisition of land in a *country of concern* with the intent to build a facility that designs an integrated circuit, or (2) pivot an existing entity’s operations into a new *covered activity*, such as the acquisition of a factory with the intent to retrofit it to produce equipment for performing volume advanced packaging. A *U.S. person*’s intent (as distinct from *knowledge*) would have been sufficient in these cases for the transaction to be a *covered transaction*. This was because in the greenfield and brownfield context, a *U.S. person* may not have known at the time of the transaction that the investment would result in a *covered activity*, yet the Treasury Department nevertheless sought to cover activities intended to bring about the establishment of a *covered foreign person* or a *person of a country of concern*’s engagement in a new *covered activity*, since such a situation was likely to convey intangible benefits from the *U.S. person* to a *covered foreign person*. That a *covered foreign person* ultimately would have resulted from a greenfield or brownfield investment would not have been necessary for coverage under the Proposed Rule, as long as the intent to establish a *covered foreign person* was present at the time of the transaction. The Treasury Department assessed that requiring a greenfield or brownfield investment to result in the establishment of a *covered foreign person* or a *person of a country of concern*’s engagement in a new *covered activity* before triggering obligations associated with *covered transaction* status would have risked undermining the national security goals of the program. For the avoidance of doubt, the Treasury Department did not intend to scope in a real estate transaction where the *U.S. person* did not have the requisite *knowledge* or intent.

One commenter requested clarification that the word “development” in § 850.210(a)(4) does not encompass a *U.S. person*’s modification, configuration, or testing of a piece of technology acquired from a third-party for the company’s own use. This request reflects confusion about the way in which *develop*, as a defined term relating to the activities of a *person of a country of concern* (see § 850.211), interacts with the use of the word “development” in § 850.210(a)(4) related to greenfield and brownfield investments. The latter usage is intended to refer to the plain English meaning of the term in the greenfield and brownfield context, *i.e.*, to refer to activities such as the build-out,

expansion, or retrofitting of facilities or land, and not carry the meaning set forth in § 850.211. In response to this comment, the Treasury Department made a change to the definition of *develop* in § 850.211 of the Final Rule to expressly carve out § 850.210(a)(4) from its application.

Multiple commenters asked for clarification regarding what constitutes a change in activity under § 850.210(a)(4)(ii). One commenter stated that an activity “not previously engaged in” should refer to a person engaging in a new category of *covered activity*, rather than engaging in a new activity within the same category. Another commenter sought clarification as to when a *person* that engaged in a *covered activity* prior to the issuance of the Outbound Order would be deemed to have shifted to a new activity.

One commenter requested that the Treasury Department justify its assessment that including investments intended to result in the establishment of a *covered foreign person* or the engagement of a new *covered activity* is necessary to accomplish the national security goals of the Outbound Order. That commenter stated that the Treasury Department should eliminate the “intent” element from the relevant section of the rule and cover only transactions resulting in the establishment of a *covered foreign person*. Several other commenters requested that the text of the rule explicitly include objective criteria, such as the commitment of capital, as evidence of an intent on the part of a *U.S. person* that its investment result in the engagement of a *person of a country of concern* in a *covered activity* in which it was not previously engaged. A few commenters requested clarification regarding the intent element of § 850.210(a)(4), including how it differs from the *knowledge* standard described in § 850.104. One commenter noted ambiguity as to whose intent is relevant and how intent is to be established.

In response to the above comments, the Treasury Department has revised § 850.210(a)(4) in the Final Rule. Rather than referring to the “intent” of the *U.S. person*, the Final Rule refers to the “plans” of the *U.S. person*. In assessing whether a *U.S. person* “plans” for its actions to result in the establishment of a *covered foreign person* or to shift an existing entity’s operations into a *covered activity*, the *U.S. person* is responsible for the information it had or could have had through a “reasonable and diligent inquiry” at the time of the transaction. Indicators relevant to what the *U.S. person* plans include, for example, correspondence with the

investment target or relevant government, business plans, and presentations to potential investors.

In addition, the Treasury Department responds to the comments through modification to § 850.210(a)(4)(ii) of the Final Rule to specify that it relates to the “engagement of a person of a country of concern in a covered activity.” The Final Rule’s coverage of a “brownfield” investment is intended to capture a *U.S. person*’s acquisition, leasing, or other development of operations that the *U.S. person* knows will result in, or the *U.S. person* plans to result in, an existing *person of a country of concern* engaging in a *covered activity*.

Continuing to capture a forward-looking element in the context of the transactions addressed in § 850.210(a)(4) is important to the national security goals of the Outbound Order. Without such a provision, a *U.S. person* may not be able to invest in an entity that is a *covered foreign person* but could instead establish or contribute to the engagement of such a person in a *covered activity*. With respect to a greenfield or brownfield investment, the Treasury Department assesses that waiting until such an investment has achieved its aims before covering it is insufficient to achieve the national security aims of the Outbound Order. Therefore, the Treasury Department declines to eliminate entirely the forward-looking element of this provision, as one commenter requested.

Multiple commenters also requested clarification of the interplay between § 850.210(a)(4) and the exception for an intracompany transfer at § 850.501(c). As further discussed regarding the definition of an *excepted transaction* (see below), § 850.501(c) of the Final Rule provides an exception for certain intracompany transfers between a *U.S. person* and its *controlled foreign entity* to support ongoing operations with respect to *covered activities* or other ongoing or new activities that are not *covered activities*. Because of this change to the text of 850.501(c), the Treasury Department determined that the Proposed Rule’s reference to § 850.210(a)(4) in § 850.501(c) was no longer necessary as the text of § 850.501(c) itself now makes clear that the exception does not apply to *covered transactions* involving new *covered activities*, which remain subject to § 850.210(a)(4).

Entrance Into a Joint Venture

Several commenters provided views on § 850.210(a)(5) of the Proposed Rule, which defined as a *covered transaction* a *U.S. person*’s entrance into a joint venture, wherever located, with a

person of a country of concern where the *U.S. person* either *knew* or intended that the joint venture would have engaged in a *covered activity*. Like the greenfield or brownfield investment prong discussed above, this provision was intended to capture situations in which a *covered foreign person* did not exist at the time of a transaction, but the transaction structure presented the opportunity and incentive for the transfer of intangible benefits from a *U.S. person* to a *person of a country of concern* through the joint venture. Similar to a greenfield or brownfield transaction, a *U.S. person*’s intent (as distinct from *knowledge*) would have been sufficient for coverage in the joint venture context because a *U.S. person* may not have *known* at the time of the transaction that the joint venture would engage in a *covered activity*, yet the Treasury Department sought to capture transactions likely to convey intangible benefits to a *covered foreign person*. The joint venture would not have had to engage in a *covered activity* for the establishment of the joint venture to be a *covered transaction* under the Proposed Rule, as long as the *U.S. person* intended for it to do so.

Commenters requested that the Treasury Department define “joint venture” to provide greater clarity on the application of the provision, and suggested definitions for the Treasury Department’s consideration and urged defining this term narrowly. One commenter requested clarity on what constitutes “intent” for the purposes of § 850.210(a)(5) and whether “intent” would be found where a *U.S. person* had a speculative idea versus a formal business plan.

Two commenters suggested that “joint venture” should include only the acquisition of an equity interest and not other forms of commercial cooperation, whereas one commenter recommended that “joint venture” only include the establishment of a new legal entity. Two other commenters recommended that the Treasury Department list certain “routine” activities that would not be covered as joint ventures.

Several commenters recommended that the Treasury Department provide guidance clarifying that certain transactions, relationships, or activities are not considered to constitute a joint venture for purposes of this provision.

One commenter requested that the Treasury Department clarify whether certain actions related to existing joint ventures are permissible, including participation in an existing joint venture, acquisition of additional interest in an existing joint venture, and engagement in a *covered activity* by an

existing joint venture. Another commenter expressed concern that the coverage of joint ventures would negatively impact the ability of U.S. companies to acquire majority stakes in their competitors in the PRC.

The Treasury Department declines to define the term “joint venture” in the Final Rule, after considering whether other regulatory regimes define the term. Instead, the Treasury Department refers to the plain English meaning of the term, *i.e.*, as involving the contribution of capital and/or assets by two parties and the sharing of profits and losses. The term as generally understood in the market does not cover “any business relationship” as was of concern to one commenter. Indeed, most of the activities that commenters request be excluded from the application of the term “joint venture” are *prima facie* not joint ventures. For example, absent other facts, a “joint venture” would not ordinarily result simply where there is a licensing arrangement, the sale or barter of goods and services, or resale of goods and services.

In response to the comments to § 850.210(a)(5), the Treasury Department is modifying this provision by striking “the U.S. person intends to engage in a covered activity.” Instead, in the Final Rule, § 850.210(a)(5) applies when “the subject U.S. person knows at the time of entrance into the joint venture that the joint venture will engage, or plans to engage, in a covered activity.” This modification is intended to focus on the *knowledge* of the U.S. person with respect to the goals of the joint venture at the time the U.S. person enters into the joint venture, rather than applying the definition of a *covered transaction* to situations where a U.S. person may have an intent that is not shared by the joint venture.

The Treasury Department clarifies that, as with the Proposed Rule, § 850.210(a)(5) of the Final Rule is intended to cover situations in which a *covered foreign person* does not exist prior to the time of a transaction, but the transaction structure presents the opportunity and incentive for the transfer of intangible benefits from a U.S. person to a *person of a country of concern* through the joint venture. Further, the plain language of the provision does not (absent additional facts) cover activities related to an existing joint venture into which a U.S. person has already entered, as the Final Rule applies only on a forward-looking basis. However, certain transactions such as the acquisition of an additional equity interest in a joint venture that meets the definition of a *covered foreign*

person may nevertheless be a *covered transaction* pursuant to other parts of the definition of this term, and the fact that a U.S. person is acquiring equity in a joint venture in which it has already entered does not remove all transactions with such a joint venture entirely from the application of § 850.210.

Investment Made as an LP

Several commenters provided views on § 850.210(a)(6) of the Proposed Rule, which related to an LP interest in certain pooled investment funds. One commenter expressed doubt with respect to the ability of an LP to determine whether a pooled investment fund is “likely” to invest in a *person of a country of concern* engaged in one or more of the three specified sectors and sought clarity with respect to the meaning of “likely” in this context.

Commenters requested additional clarity with respect to when an LP may be deemed to *know* that a pooled investment fund is likely to undertake a *covered transaction*. One such commenter suggested that the Treasury Department provide a safe harbor for LPs that engage in good faith diligence. The same commenter took the position that a previous *covered transaction* by a general partner (GP) should not in and of itself be dispositive in determining coverage. Another commenter recommended that the Treasury Department narrow the application of the provision because, according to the commenter, it undermines GP controls on information disclosure.

One commenter stated that the provision is overbroad and expressed concerns with what the commenter perceived as burdensome compliance requirements, particularly with respect to post-closing diligence. This commenter also stated that U.S. persons might be deterred from investment as an LP because they cannot control the post-investment actions of third parties.

Two commenters stated that LPs should be permitted to rely on the assurances of GPs and one commenter took the position that the GP should bear any and all requirements related to compliance with the rule. Another commenter requested that the Treasury Department issue guidance related to this provision.

One commenter requested clarity with respect to requirements for LPs subject to agreements made prior to the Outbound Order.

The Final Rule adopts the § 850.210(a)(6) from the Proposed Rule without any changes. The Final Rule, as with the Proposed Rule, provides that an LP investment in a non-U.S. person pooled investment fund constitutes a

covered transaction when two things are true: (1) the U.S. person knows at the time of the investment that the pooled investment fund will likely invest in a *person of a country of concern* that is in one or more of the three specified sectors, and (2) the fund in fact undertakes a transaction that would be a *covered transaction* if undertaken by a U.S. person. The Final Rule also provides an exception under § 850.501(a)(1)(iii) for certain LP investments (see discussion in Subpart E below), which is intended to provide options for LP investors to obtain clarity regarding the application of the Final Rule to their investments into pooled investment funds. The Treasury Department understands that it may not be practicable for a U.S. person LP to *know* the specific investment target entity or entities of a pooled investment fund even following a “reasonable and diligent inquiry” at the time of its LP investment. However, it is the Treasury Department’s understanding that it may be possible for such LP to *know*, through a “reasonable and diligent inquiry,” the country and general sector in which the pooled investment fund is likely to invest. Thus, the Treasury Department declines to provide a safe harbor related to this provision because doing so is unnecessary given an LP’s ability to engage in a “reasonable and diligent inquiry.” Whether an inquiry is a “reasonable and diligent inquiry” will be assessed through the evaluation of various considerations described in the Final Rule.

In response to issues commenters identified related to post-transaction monitoring and compliance in the LP context, the Treasury Department reiterates that the knowledge standard as applied to § 850.210(a)(6) of the Final Rule relates to a U.S. person’s *knowledge* at the time of its LP investment in the pooled investment fund. With respect to whether a U.S. person *knows* at the time of its investment that a pooled investment fund is likely to invest in a *person of a country of concern* that is in any of the three specified sectors, the LP would ascertain whether the fund is likely to invest in a relevant geographic area and sector through engaging in a “reasonable and diligent inquiry” at the time of the investment into the pooled investment fund.

With respect to whether such pooled investment fund actually undertakes a transaction that would be a *covered transaction* if undertaken by a U.S. person, if the LP knows at the time of its investment that the pooled investment fund likely will invest in a *person of a country of concern* that is in

any of the three relevant sectors, and such fund subsequently makes an investment that would have been a *notifiable transaction* if made by a U.S. person, the U.S. person will be required to file the relevant notification no later than 30 calendar days following the earliest date of the pooled investment fund's investment in a *covered foreign person*. If the LP knows at the time of its investment that the pooled investment fund likely will invest in a *person of a country of concern* that is in any of the three relevant sectors, and such fund subsequently makes an investment that would have been a *prohibited transaction* if made by a U.S. person, then the LP would have made a *prohibited transaction*, which would be a violation of the Final Rule.

Indirect Covered Transaction

To address a potential loophole, § 850.210(a) of the Proposed Rule defined a U.S. person's transaction that was indirect, as well as direct, to be a *covered transaction*. Under Note 1 to § 850.210 of the Proposed Rule, an indirect transaction would have been a *covered transaction* regardless of the number of intermediary entities involved in such transaction if it met the elements of the definition. For example, if a U.S. person owned a special purpose vehicle organized in a non-U.S. jurisdiction, that in turn acquired an equity interest in a *covered foreign person*, and the U.S. person knew at the time of its transaction that the special purpose vehicle would be acquiring an equity interest in a *covered foreign person*, that transaction would have been a *covered transaction*.

Several commenters provided views on § 850.210 as it related to indirect transactions. One commenter expressed concern that this provision would place a significant compliance burden on U.S. persons. Another commenter stated that this provision would be overbroad and suggested that the definition of *covered transaction* not include indirect transactions. Instead, the commenter recommended utilizing the definition of *covered foreign person* to cover indirect transactions.

One commenter requested that the Treasury Department clarify that an indirect *covered transaction* does not include an LP investment into a U.S. person fund. The commenter requested that the Treasury Department clarify how intermediate entities are treated in tiered ownership structures and further requested guidance on how this provision is applied with respect to certain complex transactions.

Upon review and consideration of these comments, the Treasury

Department is revising Note 1 to § 850.210. The Final Rule provides that an indirect *covered transaction* includes a U.S. person's use of an intermediary (either a legal entity or natural person) to engage in a transaction that would be a *covered transaction* if engaged in directly by a U.S. person. It is common in mergers and acquisitions transactions to use one or more intermediary legal entities, or so-called "acquisition vehicles," to facilitate a transaction. The Final Rule covers both direct and indirect transactions such that a U.S. person that is investing directly into or through an intermediary cannot avoid the notification requirement or prohibition where that intermediary, to facilitate the transaction, then invests in a *covered foreign person*. In such a case, as with the Proposed Rule, a U.S. person's investment that is indirect would be a *covered transaction* under the Final Rule regardless of the number of intermediaries involved in such transaction if the transaction meets the elements of *covered transaction*. By contrast, absent other facts (such as intent to evade the application of the Final Rule), where a U.S. person has, for example, previously invested in a non-U.S. person entity, and later in time and unrelated to the original transaction by the U.S. person, that entity subsequently invests in a *covered foreign person*, that later transaction will generally not constitute an indirect *covered transaction*, subject to §§ 850.210(a)(6), 850.303, and 850.604. In addition, in response to comments, Note 1 to § 850.210 further clarifies that for purposes of § 850.210(a)(1), a U.S. person is not considered to have acquired an indirect equity interest or *contingent equity interest* in a *covered foreign person* when the U.S. person acquires an LP interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund and that fund then acquires an equity interest or *contingent equity interest* in a *covered foreign person* (see the discussion of an acquisition of equity interest above). Consistent with requests from commenters, the Treasury Department anticipates making additional information available via the Treasury Department's Outbound Investment Security Program website.

Stock Options and Other Equity-Based Compensation

Several commenters expressed views with respect to the scope of the definition of *covered transaction* and specifically whether employee compensation in the form of equity would be covered. Multiple commenters stated that compensation in the form of

equity should not be a *covered transaction*. One commenter requested clarity as to whether receipt of equity compensation is a *covered transaction*, and several commenters recommended that the Treasury Department either provide clarification within the definition of *covered transaction* or within the definition of *excepted transaction*.

Multiple commenters also requested that carried interest be clarified as beyond the scope of *covered transaction* as it is a form of compensation to a U.S. person rather than the acquisition of an equity interest.

The Treasury Department agrees with commenters that while the receipt of compensation by an employee of a *covered foreign person* in the form of equity or an option to purchase equity, as well as the exercise of such an option, would fall within the definition of a *covered transaction*, it should be removed from coverage of the Final Rule. In accepting or converting employee compensation, a U.S. person employee is generally not providing capital to a *covered foreign person* employer in a manner implicating the same policy concerns as *covered transactions* that are within the scope of the Final Rule. Considering the potential implications for U.S. person individuals, such as employment prospects and personal finances, that could result from the coverage of stock options and other equity-based compensation under the Final Rule, the Treasury Department has added an exception to § 850.501(f) to that effect (see the discussion of an *excepted transaction* below).

As to comments regarding carried interest, the Treasury Department agrees that absent other relevant facts, the payment of carried interest to a U.S. person would not trigger any of the prongs of the definition of *covered transaction* because it ordinarily involves a cash payment to a U.S. person. However, the fact that carried interest is awarded to a U.S. person making an investment (or working at a U.S. person entity making an investment) in a *covered foreign person* does not insulate the transaction giving rise to such payments from the application of the Final Rule.

Covered Transaction—Final Rule Summary

The Final Rule defines a *covered transaction* to include a U.S. person's direct or indirect:

- Acquisition of an equity interest or *contingent equity interest* (including convertible debt) in a *covered foreign person*;

- Provision of debt financing that affords the lender certain management or governance rights in a *covered foreign person* that are characteristic of an equity investment but not typical of a loan;

- Conversion of a *contingent equity interest* (including convertible debt) in a *covered foreign person* where the *contingent equity interest* was acquired on or after the effective date of the Final Rule;

- Acquisition, leasing, or other development of land, property or other assets that will result in or the U.S. person plans to result in the establishment of a *covered foreign person*, or the engagement of an existing *person of a country of concern* in a *covered activity*;

- Entrance into a joint venture, wherever located, with a *person of a country of concern* where the joint venture will engage in or plans to engage in a *covered activity*; and

- Acquisition of an LP interest in a non-U.S. person pooled investment fund that invests in a *covered foreign person*.

Each of the above transaction types includes a specific requirement for what a U.S. person knows (or plans) for a transaction to be a *covered transaction*. Further detail on each of these transaction types is provided below. The definition of *covered transaction* notes that it does not include an *excepted transaction* and, consistent with the Outbound Order and the Proposed Rule, does not include a transaction for the conduct of the official business of the U.S. Government by employees, grantees, or contractors thereof. Note that the mere act of receiving a U.S. Government grant does not make a person an employee, grantee, or contractor of the U.S. Government.

Acquisition of Equity Interest or Contingent Equity Interest

The definition of *covered transaction* includes the acquisition of an equity interest in a *covered foreign person* and the acquisition of a financial interest, including debt, that does not constitute an equity interest at the time of acquisition but is convertible into, or provides the right to acquire, an equity interest, either upon the occurrence of a contingency or defined event or at the discretion of the U.S. person holding the interest. As clarified in the Final Rule, neither the issuance of a secured loan or similar debt financing for which equity is pledged as collateral, nor the acquisition of such secured debt on the secondary market, is an acquisition of an equity interest. However, foreclosure on collateral where the debtholder takes

possession of the pledged equity is an acquisition of an equity interest; *provided that* such an acquisition is not a *covered transaction* where the equity was pledged prior to the effective date of the Final Rule or where the U.S. person did not know at the time of issuing or acquiring the debt that the pledged equity was in a *covered foreign person*.

Debt With Equity-Like Characteristics

The definition of *covered transaction* includes the provision of a loan or similar debt financing arrangement to a *covered foreign person* that affords or will afford an interest in profits of the *covered foreign person*, the right to appoint members of the board of directors (or equivalent), or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan.

Conversion of Contingent Interest or Convertible Debt

The definition of *covered transaction* includes as a separate basis of coverage the conversion of a *contingent equity interest*, including debt, in a *covered foreign person* where the *contingent equity interest* was acquired by the U.S. person on or after the effective date of the Final Rule. As stated above, in addition to the conversion, the original acquisition of such an interest is a *covered transaction*. With respect to a *notifiable transaction*, the policy objective of including the conversion of a *contingent equity interest* or convertible debt in the definition of *covered transaction* is to gain visibility into the circumstances in which contingent interests in a *covered foreign person* convert. Including the conversion of a *contingent equity interest* or convertible debt in the scope of *covered transaction* also addresses circumstances where the investment target or borrower is not a *covered foreign person* at the time of acquisition of the relevant interest but is a *covered foreign person* at the time of conversion of such interest. The Treasury Department anticipates that if the original acquisition was a *notifiable transaction* and was timely notified, the second notification submitted with respect to the conversion will likely be similar to the first notification and thus less time-consuming to prepare.

The Treasury Department considered alternative approaches such as covering only the acquisition and not the conversion of contingent interests or covering only the conversion. However, each alternative is either over- or under-inclusive in situations where an investment target has pivoted away

from, or into, a *covered activity* in the interim between acquisition and conversion. Because the Final Rule does not define a conversion of a *contingent equity interest* as a *covered transaction* in situations where the U.S. person acquired the interest prior to the effective date of the Final Rule, no U.S. person is disadvantaged for having acquired a contingent interest without first knowing of the scope of the Final Rule.

Greenfield or Brownfield Investment

The definition of *covered transaction* includes a U.S. person's acquisition, leasing, or development of operations, land, property, or other assets in a *country of concern* when the U.S. person knows that such acquisition, leasing, or development will result in, or that the U.S. person plans to result in, either (1) the establishment of a *covered foreign person*, such as the acquisition of land in a *country of concern* with the intent to convert it into a facility that designs an integrated circuit (generally known as a "greenfield" investment) or (2) a *person of a country of concern's* engagement in a *covered activity* (generally known as a "brownfield" investment).

A U.S. person's plans are sufficient in these cases for the transaction to be a *covered transaction*. This is so because in the greenfield and brownfield context, a U.S. person may not know at the time of the transaction that the investment will result in a *covered activity*, yet the Treasury Department nevertheless seeks to cover activities intended to bring about the establishment of a *covered foreign person* or a *person of a country of concern's* engagement in a *covered activity*, since such a situation is likely to convey intangible benefits from the U.S. person to a *covered foreign person*. That a *covered foreign person* ultimately results from a greenfield or brownfield investment is not necessary for coverage under the Final Rule, so long as the specified action coupled with the specified plan is present at the time of the transaction.

The Treasury Department has assessed that requiring a greenfield or brownfield investment to result in the establishment of a *covered foreign person* before triggering obligations associated with *covered transaction* status risks undermining the national security goals of the program. For the avoidance of doubt, the Treasury Department does not intend to scope in transactions, including real estate transactions, where the U.S. person does not have the requisite knowledge or plan. The Treasury Department will

assess a *U.S. person's* plans via objective indicators, including, for example, correspondence with the investment target or relevant government, business plans, and any presentations to potential investors.

Entrance Into a Joint Venture

The definition of *covered transaction* includes a *U.S. person's* entrance into a joint venture, wherever located, with a *person of a country of concern* where the *U.S. person knows* the joint venture either will engage, or plans to engage, in a *covered activity*. Like the greenfield or brownfield investment prong discussed above, this prong is intended to cover situations in which a *covered foreign person* does not exist at the time of a transaction, but the transaction structure presents the opportunity and incentive for the transfer of intangible benefits from a *U.S. person* to a *person of a country of concern* through the joint venture. Similar to a greenfield or brownfield transaction, the joint venture does need not to engage in a *covered activity* for the establishment of the joint venture to be a *covered transaction* under the Final Rule as long as the *U.S. person knows* the joint venture will do so, or plans to do so.

§ 850.211—Develop

Under the Proposed Rule, *develop* was defined as engagement in any stages prior to serial production, including design or modification, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. One commenter requested that the Treasury Department clarify the meaning of “development” in § 850.210(a) and *develop* as defined in § 850.211 of the Proposed Rule. The same commenter also requested that the Treasury Department clarify that *develop* at § 850.211 of the Proposed Rule would not include a company's modification, configuration, or testing of a piece of technology acquired from a third party for the company's own use.

In consideration of these comments, the Final Rule modifies the definition of *develop* from the Proposed Rule. First, the Final Rule now clarifies that the definition of *develop* in § 850.211 applies to all provisions of the Final Rule except for § 850.210(a)(4). This change is being made because *develop* as defined at § 850.211 is primarily related to the development of technologies and products referenced at §§ 850.217 and 850.224. As described above in the discussion regarding

§ 850.210(a)(4), the term “development” is often used when describing brownfield investments and has the plain English meaning of the term as commonly used in that context (e.g. to refer to activities such as the build-out, expansion, or retrofitting of physical facilities or land). Second, the Final Rule adds the term “substantive” to qualify “modification” so that making a modification to a third-party technology or product that is “substantive” constitutes *developing* that technology or product, but making a non-substantive modification to it does not. For example, the Treasury Department considers routine maintenance or repair of a third-party product to constitute a non-substantive modification. In contrast, the Treasury Department considers modification to advance or repurpose the performance, function, or capability of a third-party technology or product, or impact its security features (e.g., by removing security measures or safeguards from a third-party AI model), to be a substantive modification.

§ 850.213—Excepted Transaction

The Proposed Rule included a definition of *excepted transaction* that would refer to a transaction that is not a *covered transaction* because it meets specified criteria that were described in proposed § 850.501. The Treasury Department received several comments related to the definition of *excepted transaction* that focused on the specific criteria described in the operative provision for *excepted transactions* in § 850.501. Those comments are discussed below in the discussion related to § 850.501. The Final Rule adopts § 850.213 without change from the Proposed Rule.

§ 850.216—Knowledge

The Proposed Rule specified that certain provisions, including the definition of *covered transaction*, would apply only if a *U.S. person* had *knowledge* of the relevant facts or circumstances at the time of a transaction. The Proposed Rule defined *knowledge* as either actual knowledge that a fact or circumstance existed or was substantially certain to occur, an awareness of a high probability of a fact or circumstance's existence or future occurrence, or reason to know of a fact or circumstance's existence. As discussed in the Proposed Rule, this language was similar to the definition of *knowledge* found in the Export Administration Regulations (EAR) at 15 CFR 772.1.

The Treasury Department received one comment on this section. The commenter suggested that the definition

of *knowledge* be based on objective criteria concerning due diligence efforts and stated that including an “awareness of a high probability of a fact or circumstance's . . . future occurrence” in § 850.216(b) was concerning especially in connection with greenfield and brownfield investments where new facts may come to light throughout the lifecycle of a project.

The Final Rule adopts the definition of *knowledge* in § 850.216 without change from the Proposed Rule. As noted above, the language of this definition is similar to the definition of *knowledge* found in the EAR, and retaining this language is consistent with the goals and structure of the Final Rule, which implicates certain future events—for example, in § 850.210(a)(5), the entrance into a joint venture where the joint venture will engage in a *covered activity*. In addition, where the Final Rule implicates *knowledge* of a future event, such as the definition of *covered transaction* in § 850.210, such *knowledge* is to be assessed “at the time” of the relevant transaction. This language makes clear that the evaluation of *knowledge* as to the relevant facts or circumstances—including in the context of greenfield or brownfield investments—is at the time of the transaction.

§ 850.217—Notifiable Transaction

As discussed in the Proposed Rule, a *notifiable transaction* would have been a *covered transaction* in which the relevant *covered foreign person* undertook (or in the case of certain greenfield, brownfield, or joint venture investments, the *U.S. person knew* would or intended to undertake) any of several specified *covered activities* listed in the proposed definition of *notifiable transaction*.

In the Proposed Rule, the Treasury Department determined that the listed activities may contribute to the threat to the national security of the United States identified in the Outbound Order. Each of the technical descriptions and references to end uses in the proposed definition were designed to achieve the national security policy objectives of the Outbound Order, and the Proposed Rule noted that the Treasury Department may consider further technical refinements consistent with these objectives. Each *covered activity* for purposes of a *notifiable transaction* is discussed below.

The submission of information to the Treasury Department regarding a *notifiable transaction* would increase the U.S. Government's visibility into transactions involving technologies and products relevant to the threat to the

national security of the United States identified in the Outbound Order. This information would be instructive in identifying sectoral trends and related capital flows in the *covered activities*. Additionally, it would inform future policy development with respect to both implementation of the Outbound Order, as well as the establishment or expansion of other U.S. Government programs relevant to the covered national security technologies and products. It is expected that this information would help policymakers determine whether any existing legal authorities should be used, or new action should be taken, to address the threat to the national security of the United States identified in the Outbound Order.

Commenters provided feedback on the nature and scope of *notifiable transactions* defined in § 850.217.

Notifiable Transaction—Integrated Circuit Design and Production

Sections 850.217(a), (b), and (c) of the Proposed Rule defined *notifiable transactions* involving integrated circuits to include any *covered transaction* in which a relevant *covered foreign person* or joint venture designed, fabricated, or packaged any integrated circuit that was not described in the definition for *prohibited transaction* (i.e., an integrated circuit did not meet the performance parameters or criteria set forth in paragraphs (c), (d), and (e) of § 850.224 of the Proposed Rule, as applicable). Commenters suggested that the definition for *notifiable transaction* involving integrated circuits was broad and could implicate integrated circuits at “legacy” or “mature” process nodes that are commercially available and pose limited national security risk. Commenters cited the administrative or compliance burden for U.S. semiconductor companies adhering to the notification requirement, with one commenter suggesting that the notification and disclosure requirements could lead a company to focus on compliance at the expense of research and development. Commenters suggested narrowing the criteria for *notifiable transactions* involving integrated circuits by aligning the scope of integrated circuits in the rule to integrated circuits controlled under the EAR. One commenter requested the Treasury Department consider expanding the scope of *notifiable transactions* to those that do not involve a *country of concern*. One commenter also noted the importance of timely updates to regulations in the future and engagement with the private sector to ensure that notification requirements

involving integrated circuits keep pace with technological and industry developments.

The Final Rule implements § 850.217(a) through (c) without change from the Proposed Rule. In considering comments on the breadth of § 850.217(a) through (c), the Treasury Department assesses that the design, fabrication, and packaging of integrated circuits, including those at “legacy” or “mature” process nodes, have the potential to contribute to and advance the capability of countries of concern in sensitive technologies and products critical for such countries’ military, intelligence, surveillance, or cyber-enabled capabilities. The potential intangible benefits of U.S. investment are particularly relevant in the semiconductor industry given the complex and resource-intensive nature of semiconductor research, development, manufacturing, and scaling, as well as the importance of the semiconductor supply chain to national security applications. The Treasury Department determines that visibility into these transactions is important and thus maintains a notification requirement. The Treasury Department also notes that technical thresholds set forth in the Final Rule, developed in consultation with the Department of Commerce and other agencies, are in many cases consistent with but may not precisely match with the EAR, International Traffic in Arms Regulation (ITAR), or other export control regimes due to differences in policy objectives and legal authorities. Addressing the threat posed by the advancement by countries of concern in areas critical for military, intelligence, surveillance, or cyber-enabled capabilities may require restricting transactions in persons engaged in technologies that are upstream of, at different technical thresholds than, or otherwise distinct from those controlled for export. Moreover, the definition of *country of concern* is set forth in the Outbound Order (listed in the Annex) and is not independently defined by the Treasury Department in the Proposed Rule. The Treasury Department intends to continue engaging with stakeholders in the semiconductor industry and other industries to inform any future updates to the notification requirements involving integrated circuits or related technologies.

Notifiable Transaction—AI System—Overall Approach

Section 850.217(d) of the Proposed Rule defined *notifiable transactions* involving *AI systems* to include any *covered transaction* in which a relevant

covered foreign person or joint venture developed any *AI system* that was not described in § 850.224(j) or (k) of the Proposed Rule and that was designed to be used for any government intelligence, mass-surveillance, or military end use; intended by the *covered foreign person* or *joint venture* to be used for cybersecurity applications, digital forensics tools, penetration testing tools, or the control of robotic systems; or trained using a quantity of computing power greater than a numerical threshold. A few commenters recommended that the Treasury Department revise the AI-related notification requirements to focus on only technical criteria (i.e., the computing power thresholds, rather than the end-use thresholds) when determining whether a target is engaging in *covered activities* involving *AI systems*. One commenter suggested that the definition of a *notifiable transaction* involving an *AI system* revert to the language discussed in the ANPRM, which focused on *AI systems* designed to be exclusively used for certain non-military applications. Another commenter noted that the scope of *AI systems* covered by the notification requirement and prohibition should be defined to avoid negative impacts on investment cooperation between the United States and the PRC in certain sectors such as healthcare, education, and agriculture.

The definition of a *notifiable transaction* involving an *AI system* in the Final Rule includes both end-use thresholds under § 850.217(d)(1) and (2) and technical thresholds under § 850.217(d)(3). This approach captures for notification those transactions involving *AI systems* that are relevant to national security either because of their end use—they are designed for government intelligence, mass-surveillance, or military end use or are intended to be used for cybersecurity applications, digital forensics tools, penetration testing tools, or the control of robotic systems end—or because they meet the technical threshold of greater than 10^{23} computational operations. The Treasury Department considered and assessed that limiting *notifiable transactions* involving *AI systems* to systems designed to be exclusively used for certain non-military applications would be too narrow to capture dual-use technologies of potential concern. Similarly, the Treasury Department assessed that sectoral carveouts for *notifiable transactions* would undermine the goals of the Outbound Order, since *AI systems* designed or intended for a listed end use or trained

on greater than 10^{23} computational operations are by nature designed or trained with an objective or a level of sophistication that could contribute to capability development in areas critical for military, intelligence, surveillance, or cyber-enabled capabilities by countries of concern.

Substantive changes are discussed below. The Final Rule also implements stylistic changes in conformance with the substantive changes discussed below.

Notifiable Transaction—AI System—End Use—Design Intent

Regarding the end-use thresholds for *notifiable transactions* involving *AI systems*, commenters also noted the challenge of distinguishing between *AI systems* that are “designed” for government intelligence, mass-surveillance, or military end uses (which are subject to the notification requirement) from *AI systems* that are “exclusively designed” for the same end uses (which are subject to the prohibition). A commenter suggested allowing U.S. investors to rely on information or representations of the target, which would be able to assess the design intent and end use of a given *AI system*. Another commenter suggested clarifying the requirement by replacing “designed to be used” with “may be used” in § 850.217(d)(1), which would broaden the notification requirement to encompass any *AI systems* with the potential for any of the listed end uses without the need for investors to assess “design” or “exclusive design” intent. Another commenter requested that the Treasury Department define “design” in relation to a *covered activity*.

Sections 850.217(d) and 850.224(j) in the Final Rule retain the use of “design” and “exclusive design” as an end-use threshold for identifying certain *notifiable* and *prohibited transactions*, respectively, that involve *AI systems*. The Treasury Department notes that the end-use thresholds for *AI systems* are complemented by the technical threshold for computing power at § 850.217(e), which provides criteria for *notifiable transactions* involving *AI systems* trained using a quantity of computing power greater than 10^{23} computational operations. In some instances, the technical thresholds would therefore obviate the need for an investor to assess design intent of *AI systems*. The Treasury Department recognizes that while design intent may not always be easy to ascertain, especially in early-stage startup companies, the assessment of the investor is based on information available at the time of the transaction,

consistent with the knowledge standard described at § 850.104. The Treasury Department further notes that assessing a given *AI system* for “design” or “exclusive design” may involve considering an AI developer’s source of funding, customer base, nature and extent of model customization, performance indicators from testing and evaluation, and relevant training data, among other factors. The Final Rule does not adopt a specific definition for “design,” since the specific applications of “design” may vary through their usage in the regulatory text depending on the relevant technology. The Treasury Department notes that the plain English meaning of “design” should apply, including but not limited to the process of conceiving, defining, or planning a system for a specific function or end use, such as laying out elements, interfaces, and other characteristics in accordance with identified requirements or architecture.

Commenters also noted that the first parenthetical list under § 850.217(d)(1) in the Proposed Rule seemed to suggest that any *AI system* incorporating any of the features in the serial list would automatically qualify as “designed to be used for” mass-surveillance end use. Commenters were concerned that such an approach would implicate many exclusively commercial *AI systems* capable of “mining text, audio, or video; image recognition; location tracking; or surreptitious listening,” since such features are more commonplace.

The Final Rule makes an adjustment in the first parenthetical list under § 850.217(d)(1) to clarify that the list is illustrative of the types of features that could contribute to mass-surveillance end use.

One commenter sought clarification regarding whether the terms “designed to be used” and “intended . . . to be used for” in § 850.217(d)(1) and (2), respectively, are meant to have different meanings. The commenter suggested that the Treasury Department use a single term if the meanings are identical or, alternatively, provide clarification regarding how the terms are meant to operate differently in the regulatory text.

The Treasury Department notes that the terms “designed to be used” and “intended . . . to be used for” operate distinctly from one another in § 850.217(d). The phrase “design to be used” refers to any *AI system* where the development of such system, including for example, research and design considerations, is undertaken in view of potential government intelligence, mass-surveillance, or military end use. The phrase “intended . . . to be used” captures *AI systems* that may or may not

have been developed specifically for cybersecurity applications, digital forensics tools, penetration testing tools, or the control or robotic systems, but are nevertheless intended by a *covered foreign person* to be used for such purposes.

The Final Rule also adds parenthetical text to § 850.217(d)(1) to clarify that weapons design includes, but is not limited to, chemical, biological, radiological, or nuclear weapons.

Notifiable Transaction—AI System—End Use—Scope

Several commenters requested that the Treasury Department distinguish between *AI systems* with end uses that are offensive in nature from those that are defensive (e.g., the cybersecurity-related applications under § 850.217(d)(2) could include both applications that disrupt another computer network and those that protect one’s own network). One commenter suggested that § 850.217(d)(2) should exclude *AI systems* sold to commercial or civilian end users and that are restricted from military, surveillance, or law enforcement uses by technical and contractual safeguards.

In response to the comments, the Final Rule includes Note 3 in § 850.217, which carves out from notification requirements certain transactions involving a *person* engaged in certain *development* of an *AI system* that would otherwise result in the transactions being *covered transactions*, where such *development* is undertaken in a manner that is unlikely to pose a national security concern. Specifically, Note 3 provides that customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for internal, non-commercial use would not itself trigger the notification requirements delineated in § 850.217 for *covered transactions* involving *AI systems*, unless such activity has a government intelligence, mass-surveillance, or military end use, or is for digital forensics tools, penetration testing tools, or the control of robotic systems. The effect of this is that a *person* customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for its own internal, non-commercial use for cybersecurity applications, or other end uses or applications *not* listed in Note 3, would not implicate the notification requirements solely on that basis.

Notifiable Transaction—AI System—End Use—Scope—Control of Robotic Systems

Commenters suggested that the notification requirement for certain *AI systems* involving the “control of robotic systems” could be narrowed to exclude certain commercial or civilian applications, with commenters suggesting specific carveouts for medical and direct patient care, or automotive use.

The Final Rule adopts the subparagraph (iv) pertaining to “the control of robotic systems” from § 850.217(d)(2) of the Proposed Rule without changes. The Treasury Department recognizes that this provision may implicate certain consumer or civilian applications, due to the dual-use nature of controlling robotic systems, and considered options for rescoping the provision, including carveouts based on direct patient care or robotic systems with lower levels of autonomy. Given the potential and significant capability enhancement afforded by *AI systems* in the area of controlling robotic systems, however, the Treasury Department assesses in consultation with U.S. Government subject-matter experts that a sectoral carveout for medical or automotive applications in the notification requirement would reduce the U.S. Government’s visibility into transactions involving dual-use technologies and products relevant to national security.

Notifiable Transaction—AI System—Technical Computing Power Thresholds

Section 850.217(d)(3) of the Proposed Rule defined *notifiable transactions* involving *AI systems* to include any *covered transaction* in which a relevant *covered foreign person* or joint venture developed any *AI system* that is not described in § 850.224(j) or (k) and that was trained on a specific quantity of computing power. Three alternates for such technical thresholds were provided for consideration in the Proposed Rule: 10^{23} , 10^{24} , or 10^{25} computational operations (e.g., integer or floating-point operations). The Treasury Department did not receive comments with specific preferences for any of the three alternate technical thresholds listed for *notifiable transactions* involving *AI systems* but did receive several comments on the general approach. One commenter suggested that investment restrictions should target *AI systems* trained on more than 10^{26} floating-point operations of compute. Other commenters noted that the Treasury Department should seek to align the AI-

related provisions of the Final Rule with other national security-related policies on AI and provide a clear rationale for the computing power threshold chosen. One commenter noted concern about using floating-point operations per second as a metric to assess risk.

Regarding the computing power threshold for *notifiable transactions* involving the development of *AI systems*, the Final Rule sets the threshold at 10^{23} computational operations. As noted above, the technical threshold of greater than 10^{23} computational operations will capture for notification *AI systems* at the lower end (in terms of scale and capability) of large-scale AI models that have been released to date. The Treasury Department, in consultation with U.S. Government subject-matter experts, selected this threshold based on the current number of publicly known AI models originating from the PRC, which is identified as a *country of concern* in the Annex to the Outbound Order, that would be implicated by the Final Rule. The Treasury Department considered other metrics for measuring AI capability and selected computing power for training consistent with the AI Order. The Treasury Department recognizes that new and potentially improved benchmarks for evaluating AI capabilities may become available and will monitor these developments to incorporate, as appropriate, such metrics into future regulatory updates.

Notifiable Transaction—AI System—Changes to Technical Thresholds

Three commenters noted that *AI systems* will evolve over time and that the computing power thresholds for both *notifiable* and *prohibited transactions* will likely need to be updated in the future, suggesting that the Treasury Department should engage with the private sector to ensure such thresholds and other definitions in the rule remain relevant. One commenter requested that the Treasury Department do so through a notice-and-comment process for any updates to the computing power thresholds, as well as other covered products and technologies, including provisions to ensure that such updates do not result in *U.S. persons* being penalized for investing in entities that become *covered foreign persons*. Another commenter recommended that the Treasury Department work closely with the National Institute for Standards and Technology and in line with the AI Order on a process for updating compute thresholds. One commenter suggested that transactions involving connected and electric vehicle

technologies should be added to the notification and prohibition requirements, given pending legislation and rulemaking to control and secure connected vehicle, advanced driver assistance, autonomous vehicle, and electric vehicle technologies.

The Treasury Department anticipates that the computing power thresholds included in the Final Rule will likely need to evolve to reflect developments in AI and relevant technologies. The Final Rule includes the note to § 850.217 that was in the Proposed Rule, indicating that the Secretary, in consultation with the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, shall periodically assess whether the quantity of computing power described in paragraph (d)(3) remains effective in addressing threats to the national security of the United States and make updates, as appropriate, through public notice. The Treasury Department intends to continue engaging with stakeholders to inform future updates, as appropriate, to the notification requirements involving *AI systems* or related technologies. Regarding potential liability for a *U.S. person* that invests in an entity that was not a *covered foreign person* at the time of the transaction but becomes a *covered foreign person* because of a future regulatory update, the Treasury Department would not expect to apply such a regulatory update retroactively.

Several commenters sought clarification regarding identification of *notifiable* and *prohibited transactions* based on how and when a *person of a country of concern* “engages in” the *covered activities* referred to in the definitions of *notifiable* and *prohibited transactions*. Multiple other commenters similarly requested that the Treasury Department confirm that *covered activities* would not extend to the provision of customer support in connection with the sale of a product to a *covered foreign person*.

The Treasury Department notes that the *covered person* definition at § 850.209(a)(1) is meant to capture *persons of a country of concern* that are engaging in the *covered activities* delineated in §§ 850.217 and 850.224 and would not implicate third-party entities that supply a product or service to a *covered foreign person*, so long as the third-party entity does not itself perform the *covered activity*.

One commenter requested the Treasury Department develop a notification system requiring *U.S. persons* to file details about *covered transactions* that includes venture capital investments in *countries of*

concern that do not currently fall under the purview of other regulatory agencies. The Treasury Department declines to implement this suggestion to expand the notification requirement, as it would exceed the scope of *covered transactions* contemplated in the Outbound Order.

§ 850.219—Parent

Section 850.219 of the Proposed Rule defined *parent*, with respect to an entity, as (1) a *person* that directly or indirectly held more than 50 percent of the outstanding voting interest in an entity or the voting power of the board of the entity; (2) the general partner, managing member, or equivalent of the entity; or (3) the investment adviser to any entity that was a pooled investment fund, with “investment adviser” as defined in the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

The Treasury Department received one comment on this provision. The commenter stated that the definition of *parent* is too broad and should only include the direct or indirect holding of more than 50 percent of outstanding voting interest in an entity or voting power of the board of an entity. The Treasury Department declines to make this change to narrow the definition of *parent* in the Final Rule. The Treasury Department understands the commenter’s suggested revision as requesting the removal of paragraphs (b) and (c) from § 850.219. Doing so would narrow the application of the provision and not account for other types of entities such as limited partnerships or pooled investment funds that are structured differently than an entity with equity ownership or a board. Removing paragraphs (b) and (c) from § 850.219 would therefore result in a gap in coverage. In the Final Rule, the Treasury Department has added Note 1 to § 850.219 to clarify that an entity which satisfies the conditions in paragraphs (a), (b), or (c) is a *parent* within the meaning of this section even where such an entity is the intermediate entity and not the ultimate parent. This addition is in response to a comment to § 850.206 of the Proposed Rule which sought clarity as to whether an intermediate entity could be a *U.S. person parent* under paragraph (a) of that section for the purposes of determining whether an entity is a *controlled foreign entity*. Other than the addition of this note, § 850.219 is finalized without change from the Proposed Rule. A *parent* under the Final Rule, with respect to any entity, is (1) a *person* that directly or indirectly holds more than 50 percent of the outstanding voting interest in an entity or the voting

power of the board of the entity; (2) the general partner, managing member, or equivalent of the entity; or (3) the investment adviser to any entity that is a pooled investment fund, with “investment adviser” as defined in the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

§ 850.221—Person of a Country of Concern

Section 850.221 of the Proposed Rule described four sets of circumstances that would cause a *person* to be a *person of a country of concern*:

- An individual who is a citizen or permanent resident of a *country of concern* (excluding U.S. citizens and U.S. permanent residents);
- An entity with a principal place of business in, headquartered in, incorporated in, or organized under the laws of, a *country of concern*;
- The government of a *country of concern*, persons acting on behalf of such a government, and persons controlled by or directed by such a government; or
- Any entity, wherever located, in which one or more *persons of a country of concern*, individually or in the aggregate, holds at least 50 percent of any outstanding voting interest, voting power of the board, or equity interest, regardless of whether the interest was held directly or indirectly.

As stated in the Proposed Rule, this defined term is a component of the definitions of *covered foreign person* and *covered transaction*.

Person of a Country of Concern—General

The Treasury Department received comments on several aspects of § 850.221. A commenter stated that the Proposed Rule would increase the time and complexity of completing due diligence due to the breadth of the definition of *person of a country of concern*, and other commenters noted that regulatory restrictions in a *country of concern* or privacy concerns could impede or prevent a *U.S. person* from collecting information from a *person of a country of concern*. The Treasury Department notes that the definition of *person of a country of concern* is derived from section 9(e) of the Outbound Order and was crafted to cover a variety of persons with relationships to a *country of concern*. As previously discussed, the Treasury Department appreciates the dynamics of conducting due diligence regarding overseas investment targets. However, the Treasury Department expects that, through a “reasonable and diligent inquiry,” a *U.S. person* should be able

to determine whether a potential investment target involves a *person of a country of concern* as defined in the Final Rule. As in the Proposed Rule, the Final Rule sets forth a variety of non-exclusive factors that are relevant to conducting a “reasonable and diligent inquiry.” Further discussion of due diligence as it relates to how *knowledge* will be assessed can be found in Subpart A and the preamble to Subpart A.

A commenter noted that other U.S. national security regulatory programs publish a list of foreign persons subject to certain transactional prohibitions, allowing due diligence to be carried out through automated processes. The commenter stated that a list-based approach would reduce the compliance burden for a *U.S. person* investing in publicly traded securities. The commenter also noted that a *U.S. person* would be required to establish a separate, manual compliance process in the absence of such an approach. In response to this comment, the Treasury Department notes that compiling a list as the commenter suggested would be challenging given that any such list would likely be subject to frequent change and likely underinclusive, which would undermine the national security goals of the Outbound Order. Additional discussion relevant to this point is above in the discussion of a *covered transaction*. The Treasury Department instead expects a *U.S. person* to conduct a “reasonable and diligent inquiry” to determine whether a transaction is covered under the Final Rule, including whether any *person of a country of concern* or *covered foreign person* is involved. Note, however, that the definition of *prohibited transaction* provides that any *covered transaction* is prohibited when it is with or involves a *covered foreign person* undertaking any *covered activity*—whether referred to in the definition of *prohibited transaction* or in the definition of *notifiable transaction*—if the *covered foreign person* is included on one of several U.S. Government lists, such as the Entity List maintained by the Bureau of Industry and Security (BIS) within the Department of Commerce. Because the United States has already determined that the inclusion of a person on such a list evidences a threat to the interests of the United States, such as the foreign policy or national security of the United States, if a listed person is a *covered foreign person* engaged in any *covered activity*, then a *U.S. person’s covered transaction* with such *covered foreign person* and the transfer of capital and *U.S. person* intangible benefits to them would pose

a particularly acute risk to U.S. national security even when such listed person is engaged in what would otherwise qualify as only a *covered activity* under the *notifiable transaction* definition.

Citizen or Permanent Resident of a Country of Concern

Section 850.221(a) of the Proposed Rule related to those individuals that are defined as a *person of a country of concern*. These included any individual that (1) was a citizen or permanent resident of a *country of concern*, (2) was not a U.S. citizen; and (3) was not a permanent resident of the United States. The Treasury Department adopts this paragraph in the Final Rule without changes.

One commenter requested that the Treasury Department exclude from the definition of *person of a country of concern* individuals who are permanent residents or citizens of third countries and citizens of a *country of concern* (also known as dual citizens). The commenter also suggested excluding individuals who no longer ordinarily reside in a *country of concern*. While the Treasury Department understands that individuals who are citizens of a *country of concern* can have relationships to more than one country, the Treasury Department declines to amend this sub-paragraph. The fact that a *person of a country of concern* may be a dual citizen or permanent resident of a third country does not necessarily diminish their ties or allegiance to a *country of concern*, and they may still be subject to the laws of a *country of concern* that may compel the disclosure of information or other conduct. Creating an exception for such dual citizens could undermine the effectiveness of the Final Rule by introducing a loophole whereby a *person of a country of concern* could avoid coverage through taking up residency in or acquiring citizenship of a third country. The Treasury Department also notes that this sub-paragraph is derived from section 9(e)(i) of the Outbound Order.

One commenter expressed concern that the scope of this sub-paragraph, which includes individuals who are citizens or permanent residents of a *country of concern*, could prohibit U.S. investment in technology startups in the United States where the business was started by an individual who is a *person of a country of concern*. The Treasury Department interprets this comment to refer to a situation in which the *person of a country of concern* that has started a U.S. company both remains in the United States and continues to own a controlling stake such that the company

is also defined as a *person of a country of concern* pursuant to § 850.211(d). The Treasury Department notes that an individual who is a U.S. citizen or U.S. permanent resident is not a *person of a country of concern* as set forth in § 850.221. However, where a *person of a country of concern* is merely in the United States (or a third country) and is engaged in a *covered activity*, capturing U.S. *person* transactions involving such persons is consistent with the objectives of the Outbound Order, given the ties between the entity accepting investment and a *country of concern* by virtue of its continued ownership by a citizen or permanent resident of a *country of concern* that is also neither a U.S. citizen nor a U.S. permanent resident.

Another commenter stated that investments by a *person of a country of concern* enterprise in third countries do not usually pose national security risks and requested the definition be adjusted to exclude such investments. The Final Rule, like the Proposed Rule, does not generally regulate investments by a *person of a country of concern* entity into third countries, but rather regulates certain investments by a U.S. *person* into a *person of a country of concern* that engages in a *covered activity*. However, the Treasury Department declines to categorically exclude coverage of certain situations in which a *person of a country of concern* may also be a U.S. *person* (for example, because the entity is majority owned or controlled by *persons of a country of concern* but headquartered in the United States) because doing so could create a loophole that would undermine the national security goals of the Final Rule.

Entity of a Country of Concern

Section 850.221(b) of the Proposed Rule defined as a *person of a country of concern* an entity with a principal place of business in, headquartered in, or incorporated in or otherwise organized under the laws of, a *country of concern*. The Treasury Department did not receive comments on this paragraph and adopts it in the Final Rule without changes.

Control by the Government of a Country of Concern; Acting for or on Behalf of the Government of a Country of Concern

Section 850.221(c) of the Proposed Rule scoped into the definition of a *person of a country of concern* the government of a *country of concern*, including any political subdivision, political party, agency, or instrumentality thereof; any person acting for or on behalf of the government of such *country of concern*;

or any entity with respect to which the government of such *country of concern* held individually or in the aggregate, directly or indirectly, 50 percent or more of the entity's outstanding voting interest, voting power of the board, or equity interest, or otherwise possessed the power to direct or cause the direction of the management and policies of such entity (whether through the ownership of voting securities, by contract, or otherwise). The Treasury Department adopts this paragraph in the Final Rule without changes.

Commenters requested that the Treasury Department clarify which actions taken for or on behalf of the government of a *country of concern* would fall within the scope of this provision. A commenter also requested clarity on (or specific examples of) what constitutes an instrumentality or any political subdivision, political party, or agency of the government of a *country of concern*. The Treasury Department notes that "acting for or on behalf of the government of a country of concern" may include formal or informal relationships between a person and a government of a *country of concern* resulting in such person engaging in conduct for the purpose of benefitting such government. This provision is not intended to capture persons, such as third-party consultants, operating in an arm's-length commercial relationship with a government.

Person of a Country of Concern—Aggregation and Voting Power

Section 850.221(d) of the Proposed Rule scoped into the definition of a *person of a country of concern* any entity in which one or more persons identified in § 850.221(a), (b), or (c), individually or in the aggregate, directly or indirectly, held at least 50 percent of any of the following interests of such entity: outstanding voting interest, voting power of the board, or equity interest. Section 850.221(e) of the Proposed Rule made explicit that when a *person of a country of concern* held any interest described in paragraph 850.221(d) in another person, which in turn held any interest described in paragraph 850.221(d) in a third person, each of the three persons would be defined to be a *person of a country of concern*, and so on. The Treasury Department adopts these paragraphs in the Final Rule without changes.

A commenter requested that the Treasury Department revise the definition of *person of a country of concern* to exclude those entities scoped in via the language of 221(d) and (e). The commenter asserted that the inclusion of "in the aggregate" and

“direct and indirect” presents broad and impracticable diligence obligations for a *U.S. person* when determining whether an investment target is a *person of a country of concern* and recommended that the 50 percent rule apply only if attributable to a single entity, rather than in the aggregate. Alternatively, the commenter recommended excluding the aggregation of unrelated parties’ ownership stakes, and instead establishing a *de minimis* threshold for outstanding voting power or equity below 10 percent. Another commenter similarly suggested revising the rule to only require aggregation of voting interest, voting power of the board, or equity interest where the persons are related or affiliated parties. The commenter noted that this suggestion meant to reduce the burden on the U.S. Government in instances where a *U.S. person* submits a notification out of an abundance of caution due to incomplete information on transactions that may involve a *person of a country of concern*. The Treasury Department notes that the paragraphs requiring aggregation are intended to capture entities located outside of a *country of concern* that are at least 50 percent owned by a *person of a country of concern* or controlled by a government of a *country of concern*, because a *U.S. person* investment into such an entity could result in the transfer of capital and intangible benefits to or for the benefit of one or more *persons of a country of concern* or a government of a *country of concern*. As such, the Treasury Department declines to amend these provisions and reiterates that, as stated in the Proposed Rule, the definition is intended to draw a bright line so that it is straightforward for a *U.S. person* to ascertain whether an entity is a *person of a country of concern*.

One commenter recommended that the Treasury Department define “voting power of the board” to avoid uncertainty as to whether it applies based on the citizenships of members of the board. The commenter suggested a definition for the Treasury Department’s consideration. The Treasury Department declines to incorporate the definition provided by the commenter because whether it refers to an individual or entity depends on the context.

Person of a Country of Concern—Final Rule Summary

The Final Rule adopts the definition of a *person of a country of concern* without change from the Proposed Rule. This definition includes an individual who is a citizen or permanent resident of a *country of concern* and excludes

U.S. citizens and U.S. permanent residents. It also includes an entity with a principal place of business in, headquartered in, incorporated in, or organized under the laws of a *country of concern*. It also includes the government of a *country of concern*, persons acting on behalf of such a government, and persons controlled by or directed by such a government. The Treasury Department expects that, through a “reasonable and diligent inquiry,” a *U.S. person* should be able to determine whether a potential investment target involves a *person of a country of concern* as defined in the Final Rule. The definition includes any entity, wherever located, in which one or more *persons of a country of concern*, individually or in the aggregate, hold at least 50 percent of any outstanding voting interest, voting power of the board, or equity interest, regardless of whether the interest is held directly or indirectly.

Finally, the definition includes any entity, wherever located, in which one or more *persons of a country of concern*, individually or in the aggregate, hold at least 50 percent of any outstanding voting interest, voting power of the board, or equity interest, regardless of whether the interest is held directly or indirectly. This is intended to capture entities located outside of a *country of concern* that are at least 50 percent owned by *persons of a country of concern*, because a *U.S. person* investment into such an entity could result in the transfer of intangible benefits to or for the benefit of one or more *persons of a country of concern*. When evaluating a tiered ownership structure for any given entity, a *U.S. person* will need to determine whether a *person of a country of concern*, individually or in the aggregate, holds at least 50 percent of the entity’s voting interest, voting power of the board, or equity interest, in which case the entity will be considered a *person of a country of concern*. If the entity meets these criteria, another entity in which it holds at least 50 percent of the entity’s voting interest, voting power of the board, or equity interest will also be a *person of a country of concern*, and so on.

§ 850.224—Prohibited Transaction

In the Proposed Rule, § 850.224 defined a *prohibited transaction* as a *covered transaction* in which the relevant *covered foreign person* undertook (or in the case of certain greenfield, brownfield, or joint venture investments, the *U.S. person* knew would or intended to undertake) any of several specified *covered activities* listed in the proposed definition of

prohibited transaction. These *covered activities* included:

- Developing or producing any electronic design automation software for the design of integrated circuits or *advanced packaging*, certain front-end semiconductor fabrication equipment, equipment for performing volume advanced packaging, or other items related to extreme ultraviolet lithography fabrication equipment;
- Designing any integrated circuit that meets or exceeds certain advanced technical thresholds identified by the Department of Commerce, Bureau of Industry and Security, or integrated circuits designed for operation at or below 4.5 Kelvin;
- Fabricating integrated circuits that meets specified technical criteria;
- Packaging of any integrated circuit using *advanced packaging* techniques;
- Developing, installing, selling, or producing any supercomputer enabled by advanced integrated circuits that provide a theoretical compute capacity above a specified threshold;
- Developing a *quantum computer* or producing any of the critical components required to produce a *quantum computer*;
- Developing or producing any quantum sensing platform designed for, or which the relevant *covered foreign person* intends to be used for, military, government intelligence, or mass-surveillance end use;
- Developing or producing any quantum network or quantum communication system designed for, or which the relevant *covered foreign person* intends to be used for: (1) networking to scale up the capabilities of *quantum computers*; (2) secure communications; or (3) any other application that had military, government intelligence, or mass-surveillance end use;
- Developing an *AI system* that is designed to be exclusively used for, or which the relevant *covered foreign person* intends to be used for, any military, government intelligence, or mass-surveillance end use;
- Developing an *AI system* that is trained using a quantity of computing power above a technical threshold (for which the Proposed Rule offered three alternate thresholds for consideration), with a lower computing power technical threshold for *AI systems* using primarily biological sequence data (for which the Proposed Rule offered two alternate thresholds for consideration); and
- Any *covered activity* (either in the definition of *notifiable transaction* or *prohibited transaction*) if the *covered foreign person* is included on certain specified U.S. Government lists.

The Treasury Department received several comments relating to these various aspects of the scope of *prohibited transactions*.

Prohibited Transaction—General

One commenter requested that the Treasury Department revise the definition of *prohibited transaction* to distinguish between civilian and military technologies and products, which would have the effect of limiting the impact on U.S. firms seeking to enter certain civilian markets in a *country of concern*.

The Treasury Department has determined that the specified *covered activities* listed in the definition of *prohibited transaction* pose a particularly acute national security threat to the United States identified in the Outbound Order. Each of the technical descriptions and references to end uses in the definition of *prohibited transaction* is designed to achieve the focused national security policy objectives of the Outbound Order. However, the Final Rule includes Note 3 in § 850.224, which carves out from prohibition certain transactions that involve a *person* engaged in certain *development* of an *AI system* that would otherwise result in the transactions being *covered transactions*, where such *development* is undertaken in a manner that is unlikely to pose a national security concern. Specifically, Note 3 provides that customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for internal, non-commercial use would not itself trigger the prohibition delineated in § 850.224 for *covered transactions* involving *AI systems* unless such activity has a government intelligence, mass-surveillance, or military end use, or is for digital forensics tools, penetration testing tools, or the control of robotic systems. The effect of this is that a *person* customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for its own internal, non-commercial use for cybersecurity applications, or other end uses or applications *not* listed in Note 3, would not implicate a prohibition solely on that basis.

Prohibited Transaction—Integrated Circuits

Commenters requested that the rule not prohibit but instead require notification for *covered transactions* involving any integrated circuits, including those described at § 850.224(c), (d), and (e). One commenter stated that the prohibition of such transactions could prevent U.S. companies from diversifying critical

supply chains to the benefit of U.S. national security by making investments in non-U.S. companies that have operations in the PRC.

The Final Rule adopts the Proposed Rule's definition of *prohibited transactions* involving certain integrated circuits, including those described at § 850.224(c), (d), and (e). The Final Rule does make a technical edit to the chapeau at § 850.224(d), which was modified from "Fabricates any integrated circuit that meets any of the following criteria" to "Fabricates any of the following." This is a technical edit for clarity in paragraph (d) and is not intended to affect the substance of the paragraph.

The Treasury Department notes that the criteria for integrated circuits and related technologies were scoped to capture activities that pose an acute national security threat as described in the Outbound Order and Proposed Rule. The Treasury Department further notes that the Final Rule includes certain exceptions and exemptions at §§ 850.501 and 850.502, respectively, that could except or exempt certain transactions involving advanced integrated circuits, including in the event the Secretary makes a determination regarding a national interest exemption for a *covered transaction* that the Secretary determines, in consultation with the heads of relevant agencies, as appropriate, to be in the national interest of the United States.

Prohibited Transaction—AI System—Technical Thresholds

Several commenters requested the Treasury Department set the computing power thresholds for a *prohibited transaction* involving an *AI system* at 10^{26} computational operations, the least restrictive of the three potential alternates offered in the Proposed Rule (10^{24} , 10^{25} , or 10^{26}). Commenters noted that this threshold would be more likely to target the type of *AI systems* that pose acute national security threats and be consistent with the thresholds set out in the AI Order. One commenter noted that some widely-available commercial AI models have been trained at 10^{25} computational operations. For an *AI system* trained using primarily biological sequence data, one commenter recommended that the Treasury Department set the computing power threshold for a *prohibited transaction* at 10^{24} computational operations, while another noted that restrictions on the AI-related use of biological data would be better addressed through separate regulations focused on governing the

use of biological sequence data. Another commenter suggested that *AI systems* trained using primarily biological sequence data should be subject to a notification requirement only, citing the inconclusive relationship between AI training compute and bio-related risks, the distinct characteristics and open-source nature of life sciences research, and the value of a notification regime towards better understanding this subcategory of AI models. One commenter remarked that, despite its limitations, the use of a computing power threshold was a more administrable benchmark than other criteria.

The Final Rule sets the computing power threshold for a *prohibited transaction* involving an *AI system* at 10^{25} computational operations for an *AI system* generally, and at 10^{24} computational operations for an *AI system* using primarily biological sequence data. These determinations are reflected at § 850.224(k)(1) and (2), respectively. In assessing the appropriate technical thresholds for computing power, the Treasury Department considered the comments received on the Proposed Rule and inputs from U.S. Government subject-matter experts; the thresholds identified in the AI Order and related rationales; estimates for how computing power may evolve as AI model development continues; and the nature, number, and origin of current large-scale AI models trained at each of 10^{23} , 10^{24} , 10^{25} , and 10^{26} computational operations based on available information. The Treasury Department notes that the computing power thresholds identified in the Final Rule for a *prohibited transaction* involving an *AI system* capture a number of models, including models trained primarily on biological data, that originate from a *country of concern* and exhibit the scale and capability that have implications for national security. The Treasury Department will continue to monitor the development of the AI industry, including engagement with relevant stakeholders, to inform future updates to the prohibition involving *AI systems*, as appropriate.

One commenter recommended that the Treasury Department add a prohibition requirement focused on targeting computing clusters required to train frontier *AI systems*. The commenter provided specific recommendations for technical criteria related to such computing clusters, including networking of over 100Gbits/s and a calculation of theoretical maximum computing capacity. The Treasury Department notes that the suggestion to add computing clusters to

the Final Rule aligns conceptually with a reporting requirement for AI clusters (with a certain networking bandwidth minimum and theoretical maximum computing capacity) under the AI Order. The Treasury Department intends to consider a similar addition in future updates to the Final Rule, since more time, information, and analysis are required to assess the nature and scope of such restrictions, including how to avoid unnecessary impact on computing clusters used for consumer or commercial applications.

Another commenter recommended that the Treasury Department have a mechanism to reevaluate computing power thresholds in response to changes in technology and the development of *AI systems in countries of concern*. The Treasury Department notes that the Final Rule includes the note to § 850.224 from the Proposed Rule indicating that the Secretary, in consultation with the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, shall periodically assess whether the quantities of computing power described in paragraph (k) remain effective in addressing threats to the national security of the United States and make updates, as appropriate, through public notice.

Prohibited Transaction—AI System—General

One commenter recommended that the Treasury Department develop a licensing system that would approve transactions where parties can demonstrate that a relevant *AI system* is not transferred to military, intelligence, or mass-surveillance end users or end uses. The same commenter also suggested publication of a list of AI applications “authorized” for investment regardless of computing power. The Final Rule makes no change to § 850.224 in response to this comment, since, as discussed above, a licensing system based on transaction-by-transaction review would be resource- and time-intensive to administer and is unlikely to result in the approvals that the commenter anticipates due to the potential dual-use and national security implications of *AI systems* that meet the end use or computing power thresholds tied to the prohibition. The Treasury Department additionally notes that there are no restrictions on outbound investment involving AI applications that do not meet the relevant definitions and thresholds set forth in the Final Rule, even if there is not a definitive list of such applications. Such AI applications would be challenging to list

comprehensively due to the evolving nature of the AI industry and cadence of new or updated AI applications being released. The Final Rule includes additional clarification in § 850.224(j)(2) regarding an *AI system’s* government intelligence or surveillance use. The Final Rule also adds parenthetical text to § 850.244(j)(1) to clarify that weapons design includes, but is not limited to, chemical, biological, radiological, or nuclear weapons.

One commenter also requested that the Treasury Department synchronize its definition of an *AI system* as used within *prohibited transaction* with other regulations, such as by basing its definition of *AI systems* on the EAR. The commenter noted that this would better align with companies’ existing compliance operations, facilitating implementation of the rule and removing the need for companies to make subjective determinations about the intended use of *AI systems*.

In response, the Treasury Department notes that certain technologies implicated by the Final Rule may be necessarily different from those implicated by the EAR, since the restrictions on certain outbound investments are meant to prevent a *country of concern* from developing or advancing the development of technologies critical to the next generation of military, intelligence, surveillance, or cyber-enabled capabilities, including certain technologies that could be less advanced than, upstream of, or otherwise distinct from items controlled for export.

Prohibited Transaction—Quantum Computer

One commenter expressed concern that § 850.224(g), which defines a *prohibited transaction* to include a *covered transaction* in which the relevant *covered foreign person* or joint venture develops a quantum computer or produces any of the critical components of a quantum computer, could implicate research and commercial applications. The commenter requests that this provision exclude from its scope certain medical and geological applications.

The Treasury Department considered the technologies identified in § 850.224(g), including their potential use in research or commercial applications, and adopts this provision from the Proposed Rule in the Final Rule without changes. The Treasury Department notes that development of a quantum computer, or production of any of the critical components required to produce a quantum computer such as

dilution refrigerators or two-stage pulse tube cryocoolers, by a *country of concern* has the potential to pose an acute national security threat to the United States. Advances towards more capable quantum computers, including incremental advances in quality and speed, would likely contribute to a country’s capability to develop a cryptographically relevant quantum computer, among other applications, with acute national security implications. To the extent that a *covered foreign person* is engaged in developing a quantum computer or components critical to its function, the Treasury Department assesses that *covered transactions* involving such a *covered foreign person* should be prohibited to prevent a *country of concern* from accelerating its development of sensitive technologies and products critical for military end use.

Prohibited Transaction—Cross-Reference to U.S Government Lists and Programs

Several commenters discussed § 850.224(m) of the Proposed Rule, which provided that any *covered transaction* was prohibited when the transaction was with or involved a *covered foreign person* undertaking any *covered activity*—whether referred to in the definition of *prohibited transaction* or in the definition of *notifiable transaction*—if the *covered foreign person* was included on one of several U.S. Government lists, such as the Entity List maintained by BIS. One commenter recommends expanding the coverage of this provision via executive order or a related authority. Conversely, multiple commenters expressed concern that the Proposed Rule was overbroad and conflicts with policy decisions made by the U.S. Government in administering the other programs referenced in § 850.224(m).

The Final Rule makes no changes to § 850.224(m) as set forth in the Proposed Rule and adopts it in full. A *covered foreign person’s* inclusion on these lists evidences a threat to the interests of the United States, such as the foreign policy or national security of the United States. The lists in the Proposed Rule were chosen because the transfer of capital and *U.S. person* intangible benefits to any *covered foreign person* on any such list would pose a particularly acute risk to U.S. national security even when such listed person is engaged in what would otherwise qualify as only a *covered activity* under the *notifiable transaction* definition.

One commenter stated that, because some of the lists effectively already

prohibit *U.S. persons* from engaging in certain transactions with the listed persons, § 850.224(m) may be duplicative. Another commenter reiterated its request that the Treasury Department base the prohibition on a list of entities that are engaged in certain activities rather than rely on the lists in § 850.224(m). Additionally, one commenter requested clarification around the interplay between this program and other U.S. Government programs, particularly through guidance.

As stated above, the Treasury Department considers that § 850.224(m) is necessary to address circumstances in which a *U.S. person* may not otherwise be prohibited from engaging in a *covered transaction* with a listed person. While a *U.S. person* may already be prohibited from undertaking certain types of transactions with a listed person, there may be *covered transactions* under the Final Rule that are not already addressed by the other programs of the programs referenced in § 850.224(m).

The Treasury Department further declines to establish and maintain a de novo list of entities that are engaged in certain activities for the purposes of *prohibited transactions*. As discussed in the Proposed Rule, developing and maintaining a list of *entities* would be challenging given that any such list would likely be subject to frequent change and likely underinclusive, which would undermine the national security goals of the Outbound Order. Providing a list of *entities* could also result in attempts to evade the rule through corporate restructuring and would be overly burdensome to maintain for the reasons discussed in relation to the definition of a *covered transaction* above. Instead, the Treasury Department expects a *U.S. person* to conduct a “reasonable and diligent inquiry” to determine whether a transaction is covered under the proposed rule, including whether any *covered foreign person* is involved.

Lastly, the Treasury Department notes that § 850.224(m) should not be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, license, authorization, or review provided by or established under any other provision of Federal law.

§ 850.229—U.S. Person

Section 850.229 of the Proposed Rule defined a *U.S. person* to mean any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States,

including any foreign branch of any such entity, or any person in the United States.

The Treasury Department received comments on certain aspects of this section. A commenter requested that the Treasury Department reconsider prohibiting or regulating investments by foreign-domiciled funds that are controlled or managed by U.S. companies. The Treasury Department reiterates that any branch of a U.S. entity would be a *U.S. person*. With respect to actions by foreign-domiciled funds, the Treasury Department notes that as required by § 850.302, the *U.S. person parent* of a *controlled foreign entity* must take all reasonable steps to prohibit and prevent any transaction by such entity that would be a *prohibited transaction* if engaged in by a *U.S. person*. Further discussion of the requirements of a *U.S. person* related to its *controlled foreign entity* can be found in Subparts C and D and the preamble discussion for those subparts.

A commenter expressed concern about the extraterritorial reach of the definition, particularly as related to U.S. citizens employed by companies operating in third countries. The Treasury Department notes that including U.S. citizens and permanent residents, wherever located, is critical to the effectiveness of the Final Rule, as narrowing the definition may present opportunities for circumvention. Furthermore, the scope of this section is derived from section 9(h) of the Outbound Order.

A commenter requested that “any person in the United States” be removed from the definition of *U.S. person*, or that the Treasury Department provide greater clarity with respect to when a non-U.S. citizen or permanent resident in transit through the United States would be a *U.S. person*. The Treasury Department notes, as it did in the Proposed Rule, that the inclusion of “any person in the United States” mirrors the language used in the definition of “United States person” in the Outbound Order. The Treasury Department is concerned with persons who are neither citizens nor permanent residents and who are nevertheless able to accrue knowledge, experience, networks, and other intangible assets while they are in the United States that could convey valuable benefits to a *covered foreign person*. The circumstance of a non-U.S. citizen or permanent resident individual in transit through the United States who wishes to enter into a transaction that could trigger coverage under the Final Rule, while possible, is not likely to be a frequent occurrence and can be

reasonably managed with advance planning.

One commenter requested that the Treasury Department supplement the definition of *U.S. person* with examples to illustrate when a non-U.S. entity with a subsidiary, employee, unincorporated branch office, or other fixed place of business in the United States would fall within the definition. The Treasury Department anticipates providing illustrative examples via its Outbound Investment Security Program website.

The Final Rule adopts § 850.229 from the Proposed Rule without changes. The Final Rule will apply to the conduct of a *U.S. person* only. Regarding § 850.229 of the Final Rule, the Treasury Department reiterates that an entity organized in the United States will be considered a *U.S. person* even if its *parent* is a non-*U.S. person*. However, a non-*U.S. person* that happens to be a *parent* of a *U.S. person* will not be treated as a *U.S. person* for the purposes of this Final Rule solely because of its relationship to the *U.S. person*. Further, while any person in the United States, including personnel of a non-*U.S. person* entity working in a branch office of that entity or otherwise, will be considered a *U.S. person* under the Final Rule based on their presence in the United States, such person’s non-*U.S. person* employer will not to be considered a *U.S. person* solely because of an employee’s presence in the United States.

Subpart C—Prohibited Transactions and Other Prohibited Activities

This subpart of the Final Rule describes activities that are prohibited. Such activities include a *U.S. person* engaging in a *prohibited transaction* unless an exemption has been granted and includes a *U.S. person knowingly directing* an otherwise *prohibited transaction*, as described below. A *U.S. person* is also required to take all reasonable steps to prohibit and prevent any transaction by its *controlled foreign entity* that would be a *prohibited transaction* if engaged in by a *U.S. person*.

§ 850.302—Actions of a Controlled Foreign Entity

Under the Proposed Rule, a *U.S. person* would have been required to take all reasonable steps to prohibit and prevent any transaction by its *controlled foreign entity* that would have been a *prohibited transaction* if engaged in by a *U.S. person*. The Proposed Rule set out an illustrative list of factors that Treasury would have considered in determining whether the relevant *U.S. person* took all reasonable steps.

One commenter argued that the term “all reasonable steps” is overly broad and would impose an unachievable standard upon *U.S. persons*. In the commenter’s view, this would result in second guessing, even when significant efforts were made to comply. The commenter requested removal of the word “all” from the regulations, which would, in the commenter’s view, be more realistic and achievable as an obligation upon *U.S. persons*, while addressing the Treasury Department’s objective of limiting the likelihood that a *controlled foreign entity* would engage in a *prohibited transaction*. One commenter requested that the Treasury Department clarify the shareholder rights that it will consider when determining compliance with this requirement and provide more specific guidance on what constitutes “all reasonable steps” for ensuring *controlled foreign entities* follow the requirements in the rule. Another commenter suggested the Treasury Department eliminate entirely the requirement for a *U.S. person* to take all reasonable steps to prohibit and prevent its *controlled foreign entities* from undertaking a transaction that would be a *prohibited transaction* if engaged in by a *U.S. person*. Instead, the commenter suggests that such transactions be permitted but require notification.

The Treasury Department is finalizing § 850.302 as proposed. The Treasury Department declines to eliminate the requirement for *U.S. persons* to take all reasonable steps to prohibit and prevent their *controlled foreign entities* from undertaking a transaction that would be a *prohibited transaction* if engaged in by a *U.S. person*. Doing so would create a loophole whereby a *U.S. person* would effectively be able to engage in *prohibited transaction* through its *controlled foreign entity*. Moreover, the phrasing “all reasonable steps,” which is consistent with section 8(d) of the Outbound Order, makes clear that if a particular measure is “reasonable” in the context of the specific facts and circumstances of the transaction, then the *U.S. person* should take it. Removing “all” could suggest that *U.S. persons* need only take “some” reasonable steps and create a risk that a *U.S. person* could permit its *controlled foreign entity* to engage in a transaction that would be a *prohibited transaction* if engaged in by a *U.S. person* and undermine the intent of the Outbound Order. As described in Note 1 to § 850.302, the Treasury Department will assess compliance based on a consideration of the totality of relevant facts and circumstances, and where a

U.S. person has taken all steps, including those described in § 850.302(b), that were reasonable given the relevant circumstances, the *U.S. person* would be found in compliance with this provision of the Final Rule. The Final Rule adjusts the text of Note 1 to § 850.302 by replacing the phrase “given the size and sophistication of the *U.S. person*” with “in light of the relevant facts and circumstances” to clarify that all relevant facts and circumstances may be considered.

The specific measures identified in § 850.302(b) of the Final Rule that a *U.S. person* may take include: (1) the execution of agreements with respect to compliance with the Final Rule between the *U.S. person* and its *controlled foreign entity*; (2) the existence and exercise of governance or shareholder rights by the *U.S. person* with respect to the *controlled foreign entity*, where applicable; (3) the existence and implementation of periodic training and internal reporting requirements by the *U.S. person* and its *controlled foreign entity* with respect to compliance with the Final Rule; (4) the implementation of appropriate and documented internal controls, including internal policies, procedures, or guidelines that are periodically reviewed internally, by the *U.S. person* and its *controlled foreign entity*; and (5) implementation of a documented testing and/or auditing process of internal policies, procedures, or guidelines.

§ 850.303—Knowingly Directing an Otherwise Prohibited Transaction

Section 850.303(a) of the Proposed Rule would have prohibited a *U.S. person* that possessed authority at a non-*U.S. person* entity from *knowingly directing* a transaction by that non-*U.S. person* entity that would have been a *prohibited transaction* if undertaken by a *U.S. person*. A *U.S. person* would have “knowingly directed” a transaction when such *U.S. person* had authority to make or substantially participate in decisions on behalf of a non-*U.S. person* entity and exercised that authority to direct, order, decide upon, or approve a transaction that would have been a *prohibited transaction* if engaged in by a *U.S. person*. The Proposed Rule specified that a *U.S. person* would have had such authority if such *U.S. person* was an officer, director, or senior advisor, or otherwise possessed senior-level authority, at such non-*U.S. person* entity.

Section 850.303(b) of the Proposed Rule carved out from this prohibition a *U.S. person* who recused himself from an investment even if that person had the authority to make or substantially

participate in decisions on behalf of a non-*U.S. person* entity.

As the Treasury Department noted in the Proposed Rule, this provision was intended to address a potential loophole, such as a *U.S. person* senior manager at a foreign pooled investment fund that invested in a *covered foreign person* or otherwise directed a transaction that would have been prohibited if engaged in by a *U.S. person*. The approach in the Proposed Rule was guided by several goals: (1) establishing a clear standard so a *U.S. person* (or a non-*U.S. person* employing such *U.S. person*) could determine whether its (or its employee’s) conduct was covered; (2) limiting the reach of the provision to minimize the potential impact on non-senior *U.S. person* employees, including administrative staff and individuals not playing a substantial role in an investment decision; and (3) capturing concerning *U.S. person* activities in a targeted manner.

Commenters requested the Treasury Department amend § 850.303 to narrow the scope of *U.S. persons* and activity covered, provide additional guidance on how “knowingly directing” would be applied to specific situations, and clarify how a *U.S. person* could recuse themselves from an investment pursuant to § 850.303(b). Some commenters stated that if interpreted broadly and in conjunction with other terms in the Proposed Rule, this provision could operate as a prohibition on a *U.S. person* holding an executive or other decision-making role at a *covered foreign person* or any non-*U.S. company* and would be inconsistent with the objectives of other cross-border regulatory requirements.

Several commenters requested that the Treasury Department narrow the scope of “knowingly directing” by removing “or substantially participate in” and “or as part of a group” from the second sentence in § 850.303(a). Two commenters requested that the Treasury Department amend § 850.303(a) to note that certain officers or directors “may” have such authority depending on the facts and circumstances, and that not all officers and directors have any authority or power with respect to investment decisions.

Another commenter noted that the inclusion of “senior advisor” was unclear, as persons acting solely in an advisory capacity would not typically be able to “exercise” authority to direct, order, decide upon, or approve a transaction. Three commenters requested that the Treasury Department clarify that in addition to having the authority to make or substantially

participate in decisions on behalf of a non-*U.S. person*, the *U.S. person* must actually exercise that authority in regard to a transaction that the *U.S. person knows* at the time of the transaction would be a *prohibited transaction* if engaged in by a *U.S. person*.

The Final Rule revises § 850.303(a) in response to the comments. Under the Final Rule, a *U.S. person* that possesses authority at a non-*U.S. person* entity, individually or as part of a group, to make or substantially participate in decisions on behalf of such non-*U.S. person* entity, is prohibited from *knowingly directing* a transaction by that non-*U.S. person* entity that would be a *prohibited transaction* if undertaken by a *U.S. person*. As stated in the Final Rule, a *U.S. person* “*knowingly directs*” a transaction when such *U.S. person* has authority to make or substantially participate in decisions on behalf of a non-*U.S. person* entity and exercises that authority to direct, order, decide upon, or approve a transaction by that non-*U.S. person* entity that would be a *prohibited transaction* if engaged in by a *U.S. person*. The Treasury Department has modified the last sentence of § 850.303(a) to specify that a *U.S. person* possesses such authority for a non-*U.S. person* when they are an “officer, director, or *otherwise possess executive responsibilities*” (emphasis added) at a non-*U.S. person*. This modified text removes “or senior advisor” and narrows the scope of persons who may knowingly direct a non-*U.S. person* to officers, directors, or their functional executive equivalents, and is consistent with how other national-security regulatory requirements administered by the Treasury Department apply a functional test to those occupying decision-making positions (see, e.g., 31 CFR 800.402(b)(3)).

The Final Rule does not make other changes recommended by commenters to 850.303(a), such as removing “substantially participates” or “as part of a group” from what it is to “*knowingly direct*.” The Treasury Department is seeking to balance concerns about potential evasion with concerns related to the scope of the provision, including impacts on employment of non-*U.S. persons*, and has determined that scoping the provision to apply to certain persons in key roles is the most effective way to do so. Furthermore, in entities where investment decisions are frequently made by committees or other governing bodies, applying the rule only to actions taken outside of a group context would exclude a significant amount of corporate activity that could be

exploited to facilitate a *prohibited transaction*.

The Treasury Department declines to adopt a formal “facts and circumstances” test in the Final Rule, because the existing two-step requirement that a *U.S. person* must have authority and then exercise it, combined with the specific language in § 850.303(a) of the Final Rule regarding when such authority exists and the recusal carveout (discussed further below), is clearer than a “facts and circumstances” standard. Furthermore, the existing requirement in § 850.303(a) that such authority actually be exercised with regards to a particular investment for the prohibition to apply recognizes the concern raised by commenters that some executives “may” have such authority but not exercise it.

The Treasury Department has clarified that consistent with commenter views, to “*knowingly direct*” an otherwise prohibited transaction by a non-*U.S. person*, a *U.S. person* must both (1) have authority to make or substantially participate in decisions on behalf of the non-*U.S. person* and (2) exercise that authority to direct, order, decide upon, or approve a transaction that would be a *prohibited transaction* if engaged in by a *U.S. person*. In other words, a *U.S. person* with such authority will not be assessed to have “*knowingly directed*” an otherwise *prohibited transaction* unless they actually exercised that authority in decision-making regarding the transaction.

The Treasury Department considered the potential impact of this provision on employment opportunities for *U.S. persons* at non-*U.S. person* entities, but notes that the provision does not broadly restrict *U.S. persons* from holding executive or other decision-making positions at non-*U.S. persons*. The Treasury Department reiterates that § 850.303(a) applies when a *U.S. person* both has and actually exercises decision-making authority. Along with the availability of the recusal provision at 850.303(b) (discussed further below), the provisions together establish a clear standard through which a *U.S. person* could perform executive level functions at non-*U.S. person* entities without unintentionally “*knowingly directing*” a *prohibited transaction*.

Other commenters suggested exclusions for certain activities, including the provision of third-party services, such as banking, due diligence, and routine administrative work by a *U.S. person*, participation in a Limited Partnership Advisory Committee (LPAC), as well as the provision of legal advice and counsel with respect to the

applicability of the Final Rule. One commenter requested the Treasury Department amend either § 850.303(a) or the definition of *covered transaction* at § 850.210(a)(4) so that the rule would apply more clearly to investment activity, and not routine business operations, pivots, or expansions. The Final Rule does not make any changes in response to these comments because, as explained in the Proposed Rule, routine business activities conducted by a *U.S. person* (whether that *U.S. person* is an employee of the non-*U.S. person* or a third party) are unlikely to rise to the level of substantial involvement in an investment decision. Furthermore, approval or decision-making by a *U.S. person* in routine business operations of a non-*U.S. person*, which could include approving an annual budget, staffing, or procurement, are unlikely to fall within the scope of this provision. The Treasury Department declines to except a business pivot or expansion by a non-*U.S. person*, which may constitute a *prohibited transaction* (and would fall within the scope of this provision) because such a transaction is more likely to risk a transfer of intangible benefits to a *covered foreign person*.

One commenter requested clarification on how § 850.303 would apply to a *U.S. person* entity voting its interests or providing approvals, even if no *U.S. person* individual is involved, while another requested clarity on what activities of a private fund’s Investment Committee would be covered by the provision.

The Final Rule will apply to a *U.S. person* regardless of whether such *U.S. person* is an individual or an entity, as long as it meets the elements of § 850.303(a) such that it possesses the authority described and exercises such authority as described. The Treasury Department notes that a *U.S. person* who participates in an advisory board or an advisory committee of a pooled investment fund would generally not have the authority to “make or substantially participate in decisions” about investments if the advisory board or committee itself does not have the ability to approve, disapprove, or otherwise control: (1) investment decisions of the investment fund; or (2) decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested. However, in some circumstances, an advisory board or committee may approve or disapprove certain transactions, such as those where conflicts of interest are present. In those circumstances, the advisory board or committee would have the authority to “make or substantially

participate in decisions” of the investment fund.

Another commenter requested the Treasury Department clarify whether penalties apply to the relevant *U.S. person* or the non-*U.S. person* entity that undertakes a transaction that would be a *prohibited transaction* if undertaken by such *U.S. person* directly. Section 850.303 specifically prohibits actions by a *U.S. person*. A violation of this provision would therefore result in penalties for that *U.S. person*.

Knowingly Directing—Recusal Carveout

Several commenters requested additional clarification or guidance regarding the recusal provision at § 850.303(b). A few commenters requested that the Treasury Department clarify at what point a *U.S. person* would be considered to be “substantially participating” in an investment decision, and when a *U.S. person* should recuse themselves from an investment transaction to benefit from the carveout. Multiple commenters requested guidance on how the prohibition would apply to certain investment activity after the completion of an investment, or noted that the recusal should extend to negotiating and decision-making related to an investment and management and oversight of the investment after the completion date. One commenter stated that the prohibition on “knowingly directing” should only apply to the decision to enter into the investment commitment and another stated the recusal carveout should “apply no earlier than the stage of a ‘decision to undertake a transaction.’” and requested additional clarity on what such a decision would entail.

The Final Rule implements § 850.303(b) with modifications in response to comments. In particular, the Final Rule specifies in § 850.303(b) that a *U.S. person* that has the authority specified in § 850.303(a) will not be deemed to have “knowingly directed” a transaction by a non-*U.S. person* when the *U.S. person* recuses themselves from each of the following activities:

- (1) Participation in formal approval and decision-making processes related to the transaction, including making a recommendation;
- (2) Reviewing, editing, commenting on, approving, and signing relevant transaction documents; and
- (3) Engaging in negotiations with the investment target (or, as applicable, the relevant transaction counterparty, such as a joint venture partner).

Consistent with the requests of most commenters on this issue, the recusal

carveout focuses on activities connected to an investment decision and does not reach post-transaction management and oversight of an investment (so long as such post-transaction activity does not fall under the description of activities in § 850.303(b)). Because the definition of *knowingly directing* in § 850.303(a) of the Final Rule does not cover post-transaction activity, a recusal carveout that covers such activity would be inapposite.

Because the above carveout is conjunctive, a *U.S. person* that participates in any single activity specified in § 850.303(b) would not be able to qualify under it. To clarify, while this carveout, if strictly adhered to, removes an individual *U.S. person* from the scope of the prohibition in § 850.303(a), it does not confer any carveouts, protections, exceptions, exemptions, or safe harbors upon the *U.S. person* in connection with any other provision of this Final Rule or any other rule, nor does it affect the application of the Outbound Order, Final Rule, or guidance to a transaction itself or the actions of any other individual or entity.

Subpart D—Notifiable Transactions and Other Notifiable Activities

This subpart of the Final Rule requires a *U.S. person* to notify the Treasury Department in any of the following circumstances:

- If it undertakes a *notifiable transaction* (§ 850.401);
- If its *controlled foreign entity* undertakes a transaction that would be notifiable if undertaken by a *U.S. person* (§ 850.402), or;
- If the *U.S. person* acquires actual knowledge following the completion date of a transaction that the transaction would have been a *covered transaction* if the *U.S. person* had *known* of relevant facts or circumstances as of the completion date (§ 850.403).

In each of the above circumstances, the *U.S. person* is required to follow specified procedures that include requirements to submit detailed information to the Treasury Department according to set timeframes and to certify as to the completeness and accuracy of the information submitted, as well as to maintain relevant records. A *U.S. person* is also required to promptly notify the Treasury Department of any material omission or inaccuracy that the *U.S. person* learns about following any information submission.

§ 850.403—Notification of Post-Transaction Knowledge

The Proposed Rule required a *U.S. person* to notify the Treasury Department if the *U.S. person* acquired actual knowledge following the *completion date* of a transaction that the transaction would have been a *covered transaction* if the *U.S. person* had *known* of relevant facts or circumstances as of the *completion date*. Section 850.403 would have applied to circumstances in which a *U.S. person* acquired actual knowledge after the window in which a § 850.401 notification could have been timely submitted. Under § 850.403 of the Proposed Rule, in such a circumstance a *U.S. person* would have been required to submit a notification pursuant to § 850.404 within 30 days of acquiring such *knowledge*. Specifically, the § 850.403 notification requirement would have applied to situations where a *U.S. person* did not possess *knowledge* at the time of the transaction of a fact that, if *known* at the time of the transaction, would have made the transaction a *covered transaction* (such as, for example, the investment target’s engagement in a *covered activity*). The information requirements for a § 850.403 notification included an explanation by the *U.S. person* as to why it did not possess or obtain such *knowledge* at the time of the transaction and to describe any pre-transaction diligence. The requirement would have applied if the transaction would have been either a *notifiable transaction* or a *prohibited transaction*.

The Treasury Department received several comments with respect to this section. Commenters requested revisions to § 850.403 to remove the obligation to submit a notification in the case where a transaction counterparty has pivoted into a *covered activity* until the *U.S. person* is considering a follow-on or other subsequent investment in the target company. It was noted that without this limitation, the Proposed Rule would create an ongoing obligation to monitor and report on activities of the target company and questioned how far into the future an investor must assess a target company’s activities and how mature those plans must be before the investment is brought within the scope of the rule. Some commenters requested clarity that there is not a requirement for ongoing monitoring obligations on behalf of a *U.S. person*. However, one commenter noted that because § 850.403 only applies where the *U.S. person* has “actual knowledge,” ongoing monitoring or recurring diligence of existing investments would not be

necessary and requests that the rule state as much. Commenters also requested a clear exception from imposed divestment in situations in which a target company pivots into a prohibited *covered activity*, but the *U.S. person* performed reasonable due diligence at the time of its initial investment and satisfied the notification requirement if applicable.

The Final Rule adopts § 850.403 of the Proposed Rule largely as proposed. The only change is a technical edit to Note 1 of § 850.403 to remove the phrase “For avoidance of doubt” from the beginning of the note. This edit is for clarity and is not intended to affect the substance of the requirement. Section 850.403 applies where a *U.S. person* acquires actual knowledge after the *completion date* of a transaction of a fact or circumstance such that the transaction would have been a *covered transaction* if the *U.S. person* had *known* of the relevant facts or circumstances as of the *completion date*. As to corporate pivots into *covered activity* that occur after the *completion date* of the relevant transaction, there are two main considerations with respect to the application of the Final Rule: first, whether the *U.S. person* had *knowledge* at the time of the transaction regarding the later corporate pivot into a *covered activity*, including whether the *U.S. person* had or should have had an awareness of a high probability of a fact or circumstance’s existence or future occurrence (in which case the transaction would be a *notifiable transaction* or a *prohibited transaction* in the first instance under Subpart C or Subpart D, as applicable); and second, where a *U.S. person* does not satisfy the *knowledge* requirement at the time of the transaction, whether in the future the *U.S. person* acquires actual knowledge of a fact or circumstance that, if known to the *U.S. person* at the time of the transaction, would have resulted in a *notifiable transaction* or *prohibited transaction* (for example, that a greenfield entity was, at the time of the transaction, planning to engage in a *covered activity*). Because § 850.403 requires actual knowledge, there is no obligation for a *U.S. person* to conduct recurring diligence or actively monitor the activities of the target of the transaction after the *completion date* for purposes of § 850.403, assuming a “reasonable and diligent inquiry” had been conducted as of the time of the transaction.

The purpose of this provision, consistent with the Outbound Order, is to increase the U.S. Government’s visibility into *U.S. person* transactions

involving the relevant technologies and products.

Accordingly, under the Final Rule, a *U.S. person* who acquires actual knowledge following the completion date of a transaction of a fact or circumstance such that the transaction would have been a *covered transaction* had the fact or circumstance been known by the *U.S. person* at the time of the transaction will be required to submit a notification pursuant to § 850.404 within 30 days of acquiring such *knowledge*. This requirement will apply if the transaction would have been a *notifiable transaction* or a *prohibited transaction*.

§ 850.404—Procedures for Notifications

Section 850.404 of the Proposed Rule detailed the procedures that would have been required for submitting a notification regarding a *covered transaction* pursuant to §§ 850.401, 850.402, and 850.403. This included the method of submission via electronic filing in accordance with the instructions posted by the Treasury Department on its Outbound Investment Security Program website. Section 850.404(b) of the Proposed Rule authorized the Treasury Department to contact a *U.S. person* who files a notification with questions or document requests related to the transaction or compliance with the rule. Under § 850.404(c) of the Proposed Rule, the *U.S. person* would have been required to file a notification no later than 30 calendar days after the *completion date* of a transaction that would have been required to be notified to the Treasury Department under § 850.401 or § 850.402, and, with respect to § 850.403, no later than 30 calendar days after it acquired the *knowledge* referred to in that section. If a *U.S. person* submitted a notification prior to the *completion date* of the transaction, then under § 850.404(d) of the Proposed Rule, the *U.S. person* would have been required to update such notification no later than 30 calendar days following the *completion date* if there were material changes to the information in the original filing. Lastly, under § 850.404(e) of the Proposed Rule, a *U.S. person* would have been required to inform the Treasury Department in writing no later than 30 calendar days following the acquisition of previously unavailable information required under § 850.405.

The Treasury Department received several comments on the notification procedures. One commenter requested that in the case of multiple funding rounds where a *U.S. person* would be required to submit notifications for

substantially similar investments, that the Treasury Department either remove the notification requirement for subsequent funding rounds (absent a material change in the relevant activities of the target or relevant transaction counterparty) or allow the *U.S. person* to amend a previously submitted notification by updating it to reflect the subsequent investment. One commenter expressed concern about the Treasury Department’s authority to request documents and information about a transaction beyond the information detailed in § 850.405. The commenter requested that such follow-up be limited to instances where a notification is incomplete with respect to the information requirements in § 850.405, that follow-up requests be limited to supporting documentation identified in § 850.405(c), and that the time frame specified by the Treasury Department for responses be a “reasonable” time frame. Another commenter expressed the view that the timeline for notifications was too short and requested the timeline be extended to 90 or 180 days following the completion date of a *notifiable transaction*. One commenter requested clarification on specific recordkeeping and due diligence obligations that companies must undertake. One commenter on this section noted the absence of a mechanism through which a *U.S. person* is required to notify the Treasury Department of an instance where a *person of a country of concern* pivots into a new *covered activity*, but the *U.S. person* does not make a new contribution to this activity. The commenter suggested the rule require notification of such instances, irrespective of whether there is an additional investment made in the relevant entity, or alternatively, where a notification was previously submitted, a requirement to notify if at a future date the *covered foreign person* pivots into a *covered activity* described in the definition of a *prohibited transaction*.

The Final Rule adopts § 850.404 from the Proposed Rule without change. In the case of multiple funding rounds where the information is consistent across investments, the Treasury Department is exploring whether the electronic system for submission of notifications can allow a duplicate notification to be populated, updated as needed, and submitted, with a new certification under § 850.203. A blanket exception for additional investments in the case of multiple funding rounds would be counter to the policy objective of increasing the U.S. Government’s visibility into the volume and nature of

investments involving the identified technologies and products. With respect to the scope of follow-up questions or document requests, this is already qualified by the language “related to the transaction or compliance with [part 850]” and that provides sufficient focus. Limiting follow-up requests to only information necessary to comply with the requirements in § 850.405 would be unduly restrictive and not allow the Treasury Department to ask for relevant information about the individual transaction that may not have been contemplated in the general information requirements set forth in § 850.405, or as related to compliance. The commenter’s request for the timeline to be extended from 30 days post-closing to 90 or 180 days did not justify why a three- or six-fold increase would be necessary. The Treasury Department expects a *U.S. person* to begin collecting the relevant information for the notification submission well before the *completion date* as diligence on the transaction is often conducted early in the transaction lifecycle. On specific recordkeeping and due diligence obligations, these are discussed in various provisions including §§ 850.104, 850.405(c), and 850.904. In response to the comment recommending a mechanism through which a *U.S. person* is required to notify the Treasury Department where an investment target pivots into a new *covered activity* following an investment by a *U.S. person*, the Treasury Department declines to expand the Final Rule to require ongoing notification of post-transaction changes in an investment target or transaction counterparty’s activities where the *U.S. person* did not *know* (including having *reason to know*) at the time of the relevant transaction of the investment target or transaction counterparty’s planned engagement in a *covered activity*. While one purpose of the Outbound Order is to increase the U.S. Government’s visibility into *U.S. person* transactions involving relevant technologies and products, the Treasury Department has balanced such policy considerations with compliance considerations related to a *U.S. person*. Relatedly, and as discussed above, in cases where a *U.S. person* acquires actual knowledge following the *completion date* of a transaction of a fact or circumstance such that the transaction would have been a *covered transaction* had the fact or circumstance been known by the *U.S. person* at the time of the transaction, the *U.S. person* will be required to submit a notification pursuant to § 850.404 within 30 days of acquiring such *knowledge*.

The Final Rule describes at § 850.404 the method of submission, that electronic filing instructions will be made available and that only such electronic filing will constitute the filing of a notification pursuant to the Final Rule. Under § 850.404(b), the Treasury Department may contact a *U.S. person* who has filed a notification with questions or document requests related to the transaction or compliance with the rule. Under § 850.404(c), the *U.S. person* is required to file a notification within 30 calendar days of the completion date of a *notifiable transaction* under § 850.401 or § 850.402, and, with respect to § 850.403, no later than 30 calendar days after it acquires the knowledge referred to in that section. If a *U.S. person* submits a notification prior to the completion of a transaction, then under § 850.404(d), it must update such notification no later than 30 calendar days following the *completion date* if there are material changes to the information in the original filing. Under § 850.404(e), a *U.S. person* is required to inform the Treasury Department in writing no later than 30 calendar days following the acquisition of previously unavailable information required under § 850.405.

§ 850.405—Content of Notifications

Section 850.405 of the Proposed Rule detailed the specific information that a *U.S. person* would have been required to include as part of a notification pursuant to § 850.401, § 850.402, or § 850.403 of the Proposed Rule. This included information about the *U.S. person* and the *covered foreign person*, information about the transaction, and a discussion of the *covered activity* or activities undertaken by the *covered foreign person*. If a notification would have been required pursuant to § 850.403 of the Proposed Rule (relating to *knowledge* relevant to a transaction’s status acquired after the transaction has closed), the information to be submitted would also have included identification of the fact or circumstance of which the *U.S. person* acquired *knowledge* post-closing, a statement explaining why the *U.S. person* did not possess such *knowledge* at or prior to closing, and a description of the due diligence that the *U.S. person* undertook prior to the completion of the transaction. Section 850.405(c) of the Proposed Rule would have required a *U.S. person* to maintain records related to a notification and supporting documentation for a period of 10 years from the date of filing. Under § 850.405(d) of the Proposed Rule, if the *U.S. person* did not provide the information required by § 850.405(b),

such *U.S. person* would have been required to provide a sufficient explanation for why the information was not available or otherwise could not be obtained and explain what steps it had taken to obtain the information.

The Treasury Department received several comments on this section. One commenter suggested narrowing the information requirements or including a *de minimis* exception, particularly for smaller firms and minor transactions, to reduce the compliance burden for companies. The Treasury Department sought to address in § 850.405 of the Proposed Rule the basic information necessary to analyze and increase the U.S. Government’s visibility into *U.S. person* transactions involving the relevant technologies and products, while at the same time minimizing the compliance burden on U.S. investors. The information provided in the notifications will be helpful in highlighting aggregate sector trends and related capital flows as well as informing future policy development. The Treasury Department expects that many of the information requirements are standard for transactional due diligence and should be available to the *U.S. person*. Narrowing the information or creating a *de minimis* exception will not serve the objectives of the Outbound Order.

A commenter requested additional guidance regarding a *U.S. person*’s ability to provide “sufficient explanation” for why particular information is unavailable. The commenter stated that it was unclear whether the submission of a filing with certain information missing would be allowed, and in what circumstances an incomplete filing might be permissible. The obligation on a *U.S. person* is to provide accurate and complete information at the time of the filing. The Treasury Department anticipates there may be limited instances where the *U.S. person* does not have available all of the information required and nevertheless, receipt of the submission by the Treasury Department would be consistent with the objective of the Outbound Order. In such cases, an explanation for why the information is unavailable or cannot be obtained is important.

Another commenter referred to practices in typical venture capital and private equity investments that would make meeting the content requirements of a notification difficult, and therefore requested that requirements be lifted regarding identities and ultimate owner disclosures. The commenter stated that certain parties are contractually prohibited from disclosing the identities

of other parties and that it can be difficult to ascertain the ultimate owner of a public company. The Treasury Department notes that carveouts typically are included in contracts for sharing relevant information with government investigations, and ascertaining the identity of co-investors and ultimate owners of the relevant *U.S. person* and the relevant *covered foreign person* is important to the objectives of the Outbound Order.

A commenter sought clarification on the record retention requirements, specifically as to whether such requirements would apply to non-*covered transactions*. The Proposed Rule at § 850.405(c) provides that the *U.S. person* shall maintain a copy of the notification filed and supporting documentation for a period of 10 years from the date of the filing. This applies to transactions that are required to be notified.

The Treasury Department is adopting § 850.405 as set forth in Proposed Rule, with technical edits to paragraph (a) and paragraphs (b)(3) and (9). The technical edit to paragraph (a) clarifies that a notification submitted to the Treasury Department must be accurate and complete subject to paragraph (d), which discusses how a *U.S. person* should respond where the *U.S. person* cannot provide information required under paragraph (b), or where such information becomes available after the notification is filed with the Treasury Department. The technical edits to paragraphs (b)(3) and (9) add intermediate and ultimate parent entities for inclusion in the post-transaction organizational charts of the *U.S. person* and *covered foreign person*, respectively, as well as information related to such intermediate and ultimate parent entities, to include name, principal place of business, and place of incorporation or legal organization. Section 850.405 of the Final Rule details the specific information that must be submitted by a *U.S. person* as part of a notification, including information about the *U.S. person* and the *covered foreign person*, a brief description of the commercial rationale for the transaction, and a discussion of the *covered activity* or *activities* undertaken by the *covered foreign person*. If the notification is pursuant to § 850.403, the notification must identify the fact or circumstance of which the *U.S. person* acquired actual knowledge post-transaction, a statement explaining why the *U.S. person* did not possess such knowledge at the time of the transaction, and a description of the due diligence that the *U.S. person* undertook prior to the completion of the

transaction. Section 850.405 also identifies the records related to the *covered transaction* that the *U.S. person* must maintain for a period of 10 years from the date of filing. If the *U.S. person* does not provide information required by § 850.405, then it must provide a sufficient explanation for why the information is not available or otherwise cannot be obtained and explain what steps it has taken to obtain the information.

Subpart E—Exceptions and Exemptions

§ 850.501—Excepted Transaction

In keeping with the goal of tailoring the Proposed Rule to address the national security threat described in the Outbound Order while minimizing disruptive effects on *U.S. persons*, the Proposed Rule identified certain exceptions. A transaction that otherwise qualified as a *covered transaction* but met one of the enumerated exceptions was referred to as an *excepted transaction*. The Proposed Rule listed categories of *excepted transactions* based on the Treasury Department's determination that such transactions presented a lower likelihood of the transfer of intangible benefits to a *covered foreign person* or were otherwise less likely to raise national security concerns relative to other transactions covered by the Proposed Rule.

The Proposed Rule identified the following categories of *excepted transactions* (subject to conditions in some instances, as summarized below):

- An investment by a *U.S. person* in a publicly traded security;
- An investment by a *U.S. person* in a security issued by a registered investment company, such as an index fund, mutual fund, or exchange traded fund, or issued by any company that has elected to be a business development company;
- An investment below a certain size by a *U.S. person* LP in a pooled investment fund or where the *U.S. person* LP has secured a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a prohibited or notifiable transaction, as applicable, if engaged in by a *U.S. person*;
- A *U.S. person's* full buyout of all interests of any *person of a country of concern* in an entity, such that the entity does not constitute a *covered foreign person* following the transaction;
- An intracompany transaction between a *U.S. person parent* and its subsidiary to support ongoing operations (or other activities that are not *covered activities* as defined in § 850.208);

- Fulfillment of a *U.S. person's* binding, uncalled capital commitment entered into prior to the date of the Outbound Order;

- The acquisition of a voting interest in a *covered foreign person* upon default or other condition involving a loan, where the loan was made by a lending syndicate and a *U.S. person* participates passively in the syndicate; and

- Certain transactions with or involving a person of a country or territory outside the United States that has been designated by the Secretary in accordance with provisions set forth in the Proposed Rule.

The Treasury Department received comments to § 850.501 of the Proposed Rule, which are discussed below.

Excepted Transaction—General

Commenters were generally supportive of the *excepted transaction* concept. While most commenters focused on one or more of the above categories—which are discussed in turn below—some commenters requested the inclusion of additional exceptions or the exclusion of certain activities from the definition of *covered transaction*. Citing to ambiguities and unintended consequences, such as imposing additional due diligence burdens, several commenters requested that the Treasury Department explicitly include in § 850.501 a range of activities that were identified in the preamble to the Proposed Rule as not intended to fall within the definition of *covered transaction*: university-to-university research collaborations; contractual arrangements or the procurement of material inputs for any of the covered national security technologies or products (such as raw materials); intellectual property licensing arrangements; bank lending; the processing, clearing, or sending of payments by a bank; underwriting services; debt rating services; prime brokerage; global custody; equity research or analysis; or other services secondary to a transaction.

One commenter requested clarification that the exceptions would apply to transactions undertaken by (1) a *controlled foreign entity*, or (2) a non-*U.S. person knowingly directed* by a *U.S. person* that would otherwise fall within the definition of an *excepted transaction* if engaged in by a *U.S. person* directly. Another commenter requested that any “follow-on” transactions be excepted from coverage, stating that if an original transaction was not a *covered transaction*, then any subsequent restructuring of that transaction or additional investments in the business should receive the same

treatment to preserve the value of the original, permissible investment. One commenter asked that sale-and-leaseback arrangements be included as an *excepted transaction*, raising the possibility that the transaction could be interpreted as a prohibited greenfield investment if the leasing party were engaged in *covered activities*. One commenter requested that the Treasury Department publish a list of transactions that are not *covered transactions* in guidance materials. Another commenter requested that the Treasury Department consider exemptions or special provisions for transactions made by U.S. semiconductor companies.

Upon consideration of the requests to list activities or transactions that are not covered within the text of the Final Rule, either within the definition of a *covered transaction* or within the definition of an *excepted transaction*, the Treasury Department has determined that doing so is not necessary. The definition of *covered transaction* has been crafted to refer to a specific set of transaction types, and for any transaction to be a *covered transaction*, all of the elements in the relevant prong of the definition must be met. As such, it would be unnecessary and may be misleading to categorically identify a set of general activities as excepted from the provisions of the rule when some activities may not in the first place satisfy the elements needed to find coverage (and thus technically could not be excepted from coverage if they were never covered to begin with) or, depending on how the activity is undertaken, may meet the definitional elements and objective of the Outbound Order and thus should be evaluated as a *covered transaction*. Therefore, the Final Rule contains no such list of non-*covered activities* apart from the definition of *excepted transaction*. While *U.S. persons* subject to the rule may need to undertake due diligence to ensure compliance—i.e., to identify whether a contemplated transaction is a *covered transaction*—the Treasury Department has sought to tailor the Final Rule to address the national security threat identified in the Outbound Order.

With respect to the application of the exceptions to a *controlled foreign entity* or to a non-*U.S. person knowingly directed* by a *U.S. person*, the Treasury Department notes the Final Rule, as with the Proposed Rule, places obligations on a *U.S. person* to take all reasonable steps to prohibit and prevent its *controlled foreign entity* from undertaking a transaction that would be a *prohibited transaction* if undertaken by a *U.S. person*, and to notify the

Treasury Department if the *controlled foreign entity* undertakes a transaction that would be a *notifiable transaction* if undertaken by a *U.S. person*. If a transaction would not be prohibited or notifiable if undertaken by a *U.S. person*—as is the case with an *excepted transaction*—then there is no obligation on the *U.S. person* with respect to such transaction.

Including an exception for restructurings or follow-on investments would substantially undermine the goals of the Final Rule. The national security objectives of the Outbound Order and Final Rule are implicated regardless of whether earlier investments may have been permitted. Creating a categorical exception for corporate restructuring would potentially open a loophole, and where a transaction meets the criteria of a *covered transaction* and a restructuring introduces an entity in a *country of concern* into the corporate chain, this may be a transaction relevant for purposes of the Final Rule.

The Treasury Department assesses that an exception for sale-and-leaseback arrangements would not be consistent with the national security goals of the Final Rule. To the extent that the *U.S. person knows* or plans that the lease will result in the establishment of a *covered foreign person* or the engagement of a *person of a country of concern* in a *covered activity*, then that transaction should be a *covered transaction*. If the *U.S. person*, after “reasonable and diligent inquiry,” does not have the requisite *knowledge* or plan, then the leaseback would not be a *covered transaction*.

Several commenters requested a general de minimis exception be created in § 850.501 based on the dollar value of the transaction or the percentage of outstanding equity acquired by the *U.S. person*. One commenter suggested excepting acquisitions of less than five percent of the equity interest of a *covered foreign person*. A second commenter suggested excepting transactions where a *U.S. person* invests no more than \$10 million in a *covered foreign person* and receives no more than five percent of its equity. A third commenter requested that a presumption of an exception attach to any investment in publicly traded securities if such acquisition constitutes 10 percent or less of voting interest in the target. Several commenters stated that de minimis investments were, or were likely to be, passive, and therefore were unlikely to lead to a *U.S. person* transferring intangible benefits to the investment target.

The Treasury Department declines to institute an exception across transactions based purely on their dollar value or the percentage of equity. One reason is that the various types of transactions already included in the definition of an *excepted transaction* in the Final Rule include investments with a lower likelihood of a *U.S. person* having the opportunity and incentive to transfer intangible benefits. Such transactions include publicly traded securities and LP investments below a certain threshold (as discussed further below). In addition, and independently, a de minimis threshold based on the financial significance of a *covered activity* in relation to any particular entity does not necessarily correspond to the national security significance of such activity. The Treasury Department continues to assess that investments of the kinds identified in the definition of *covered transaction*, which has been intentionally scoped to capture those investments more likely to raise national security concerns, may contribute to national security risks regardless of their size, as even relatively low-dollar investments can lead to the transfer of intangible benefits, particularly for early-stage companies seeking investor validation or access to professional networks as much as capital. In addition, investments that fall beneath the various thresholds proposed by commenters—such as those that comprise four percent of voting interest or equity in a *covered foreign person*—may nonetheless afford significant opportunity and incentive for a *U.S. person* to transfer intangible benefits to the investment target, illustrating the challenges of a blanket de minimis threshold.

The Treasury Department additionally declines to create an exception specifically for the semiconductor industry. Given the likelihood that *U.S. person* participants in the semiconductor industry are often well-positioned to transfer intangible benefits to *covered foreign persons*, such an exception would create a significant gap in coverage under the Final Rule and thereby undermine the national security objectives of the Outbound Order.

The Treasury Department has made one technical edit to the chapeau of § 850.501. The phrase “The following transactions are excepted transactions” had been at (a) in the Proposed Rule, but this phrase is being moved into the chapeau in the Final Rule, and the phrase “An investment by a *U.S. person*,” which had been at (1) in the Proposed Rule, is now at (a)(1) in the Final Rule. This edit is for clarity and

is not intended to affect the substance of the provision.

Publicly Traded Security; Derivative; Equity Compensation

Section 850.501(a)(1)(i) of the Proposed Rule defined as an *excepted transaction* an investment into a “publicly traded security,” with “security” as defined in section 3(a)(10) of the Securities Exchange Act of 1934, as amended. As noted in the Proposed Rule, this included a security traded on a non-U.S. exchange, or a security traded “over-the-counter,” in addition to a security traded on a U.S. exchange. The Treasury Department assessed that a U.S. person’s purchase of securities traded on a public exchange or over the counter, whether inside or outside the United States, would present a lower likelihood of transferring intangible benefits to a *covered foreign person*.

A few commenters supported the Proposed Rule’s incorporation of elements from the definition of “publicly traded security” as it is used by the Office of Foreign Assets Control (OFAC) in connection with the Non-Specially Designated Nationals (SDN) Chinese Military-Industrial Complex Companies List. One commenter supported the additional clarity offered in the Proposed Rule on the exception for investments into publicly traded securities.

Several commenters discussed the definition of publicly traded security in the context of an *excepted transaction*. Multiple commenters requested that the definition of publicly traded security include derivatives, or that the definition of *excepted transaction* be expanded to include derivatives. One commenter recommended excluding derivatives unless the derivatives trade involves the right to acquire equity or certain rights associated with equity in a *covered foreign person*.

One commenter suggested exceptions for investments in securities be expanded to cover a variety of additional instruments, including index funds, mutual funds, and exchange-traded funds “involving” publicly traded securities of a *covered foreign person*, instruments that reference such securities (e.g., swaps, futures, or options), or instruments that are convertible into or exchangeable for such publicly traded securities or index funds, mutual funds, and exchange-traded funds. Another commenter requested that Treasury clarify that the exception includes rights, warrants, and derivative contracts with “publicly traded security” reference assets, as well as futures on broad-based indexes. Another commenter called on the U.S.

Government to close what it referred to as the “passive-index loophole,” requesting that the Treasury Department work with the U.S. Securities and Exchange Commission (SEC) to do so and referenced support for certain legislative efforts on this matter. One commenter questioned whether a U.S. person’s receipt of equity or an equity-related instrument from a *covered foreign person* that is a public company would qualify as an exception.

One commenter requested that the Final Rule consider subscriptions to IPOs as a “publicly traded security” or otherwise exempt subscriptions to IPOs, while others sought clarification whether initial purchasers would qualify for the exception. Other commenters requested clarity regarding whether transactions by underwriters, advisers, and other providers of “ancillary services” participating in or assisting with an IPO of *covered foreign persons* would qualify as an *excepted transaction*.

The Final Rule implements § 850.501(a)(1)(i) from the Proposed Rule without change. Under the Final Rule, an *excepted transaction* includes an investment into a “publicly traded security,” with “security” defined as set forth in section 3(a)(10) of the Securities Exchange Act of 1934, as amended. This includes a security traded on a non-U.S. exchange, or a security traded “over-the-counter,” in addition to a security traded on a U.S. exchange. In response to comments, the Treasury Department is adding an additional exception at § 850.501(a)(1)(iv) in the Final Rule that excepts an investment in a derivative so long as the derivative does not confer the right to acquire equity, rights associated with equity, or any assets in or of a *covered foreign person*.

In response to the comment regarding a “passive-index loophole,” the exception for publicly traded securities as well as that for securities issued by an investment company (further discussed below), are not loopholes but rather represent a considered decision to carve out investments that are unlikely to contribute to the national security risks connected to the transfer of intangible benefits identified in the Outbound Order. In response to one commenter’s request to except the receipt of equity or an equity-related instrument from a public company, the Treasury Department has created an exception for receipt of employment compensation in the form of stock or stock options in the Final Rule discussed more above (see *covered transaction*). This exception is reflected in the text at § 850.501(f).

The Treasury Department considers the acquisition of an equity interest in a *covered foreign person* that is not yet publicly traded for the purpose of facilitating an IPO, such as a purchase with the intent to create a market or to resell the security on a secondary market (e.g., as part of an underwriting arrangement), to be a *covered transaction* and declines to create an exception for such a transaction. Such transactions provide both capital to the *covered foreign person* and the opportunity to transfer intangible benefits, such as increased market access. (See the discussion regarding *covered transaction* above for more.) Furthermore, services ancillary to IPOs that do not include the acquisition of an equity interest (or other interests set forth in the definition of § 850.210), including underwriting services that do not entail acquiring such an interest, are not a *covered transaction* and thus do not require an exception.

Security Issued by an Investment Company

Section 850.501(a)(1)(ii) of the Proposed Rule defined as an *excepted transaction* an investment by a U.S. person in a security issued by an investment company as defined in section 3(a)(1) of the Investment Company Act of 1940, as amended (ICA), that is registered with the SEC, such as an index fund, mutual fund, or exchange traded fund, as well as a company that has elected to be a business development company pursuant to the ICA. The Treasury Department considered such investments to carry with them a lower likelihood of exacerbating the threat to national security identified in the Outbound Order.

The Treasury Department received a few comments on this section of the Proposed Rule. One commenter requested that the Treasury Department consider requiring index providers to engage in public consultation prior to undertaking methodological changes to indexes. Another commenter indicated their support for the proposed exception and requested that it be expanded to include common and collective investment funds that are exempt from the definition of “investment company” under the ICA, pursuant to section 3(c)(3) or section 3(c)(11) thereof, but are subject to regulation by Federal or state banking authorities (also known as collective investment trusts or CITs), arguing that they, like index funds, are unlikely to present the kind of risks contemplated by the Outbound Order. One commenter requested that the exceptions for investments in securities

issued by registered investment companies be expanded to cover securities issued by companies with equivalent status under the securities laws of non-U.S. countries.

The Treasury Department is implementing § 850.501(a)(1)(ii) with three changes from the Proposed Rule. The first is the insertion of “elected to be regulated as or is regulated as a business development company” in place of “elected to be a business development company.” This is a technical edit and is not intended to alter the substance of the rule. The second change is an updated statutory reference to 15 U.S.C. 80a–53 in place of 15 U.S.C. 8a–54 and a reference to the Investment Company Act of 1940 “as amended.” This is also a technical edit and is not intended to alter the substance of the rule. The third is the removal of the reference to “or any derivative thereon,” given the exception for derivatives discussed above and located at § 850.501(a)(1)(iv) of the Final Rule. Under this provision of the Final Rule, an investment by a *U.S. person* in a security issued by a registered investment company, such as an index fund, mutual fund, or exchange traded fund, as well as a business development company under the ICA, are excepted from the definition of *covered transaction*.

The Treasury Department recognizes the policy goal underpinning the request to impose a requirement on index funds to engage in public consultation prior to making methodological changes. However, the request exceeds the scope of authority delegated to the Treasury Department by the Outbound Order, and thus cannot be addressed in this rulemaking. With respect to CITs, while CITs serve a similar purpose to registered investment companies, they are not themselves separate legal entities, but a type of fiduciary account maintained by a Federal or state bank or trust company. CITs are investment funds available mainly in employer-sponsored retirement plans and unregulated by the SEC, so adding an exception for CITs would undermine this separate treatment for pooled investment funds under § 850.501(a)(1)(iii). The Treasury Department declines to expand the exceptions for investments in securities issued by registered investment companies to cover securities issued by companies with equivalent status under the securities laws of non-U.S. countries given a desire to keep the exception limited and the complexities in assessing the equivalence of non-U.S. securities laws, which can vary considerably across jurisdictions.

Investment Made as an LP

The Proposed Rule presented two alternates for § 850.501(a)(1)(iii) for commenters to consider. Under proposed Alternate 1, a *U.S. person*’s investment made as an LP in a pooled investment fund would have constituted an *excepted transaction* if (1) the LP’s rights are consistent with a passive investment, and (2) the LP’s committed capital is not more than 50 percent of the total assets under management (AUM) of the pooled investment fund. If the *U.S. person* LP’s committed capital were to constitute more than 50 percent of the total AUM of the pooled investment fund, its investment would have qualified as an *excepted transaction* only if the *U.S. person* secured a binding agreement that the pooled investment fund would not use its capital for a *prohibited transaction*. Under proposed Alternate 2, a *U.S. person*’s investment made as an LP in a pooled investment fund would have constituted an *excepted transaction* if the LP’s committed capital is not more than \$1 million.

A number of commenters expressed a preference for Alternate 1. No commenters expressed a preference for Alternate 2. Several commenters noted that Alternate 2 would make the exception for an LP investment effectively unavailable to most *U.S. persons* (including U.S. institutional investors) investing in a pooled investment fund as an LP. One commenter noted that the size of an LP’s capital commitment in a particular fund may not align to the size of the LP’s investment allocated specifically to a *covered foreign person*. Several commenters stated that Alternate 1 was better aligned with the policy goals of the rule because by focusing on an LP’s relative share of a given pooled investment fund as a percentage of AUM, which relates to the LP’s influence within the pooled investment fund, it focused more on the potential transfer of intangible benefits from a non-passive *U.S. person* investor via such fund than the absolute dollar threshold in Alternate 2. Two commenters stated that Alternate 1 aligned with the goals of the Outbound Order because the AUM threshold of 50 percent was aligned with the threshold for control of a pooled investment fund. One commenter stated that Alternate 2 would disadvantage *U.S. person* LPs and facilitate the entrance of non-*U.S. person* LPs into pooled investment funds in their place.

Two commenters requested that if the Treasury Department adopts Alternate 2, it should raise the dollar threshold to

be significantly higher, such as \$20 million. One commenter stated that there should be no de minimis threshold for the exception for LP investments at all because LPs only have limited liability as long as they remain passive investors. One commenter suggested that an exception for all passive investment, similar to the approach taken for LPs in Alternate 1, be included in the rule. One commenter requested that the Treasury Department remove the exception for LP investments altogether.

In discussing the effects of Alternate 2, one commenter stated that some fund managers do not accept investments under \$1 million to comply with SEC laws and regulations related to “sophisticated investors.” The commenter also stated that a range of investors rely on investment in private funds as a source of diversification and strong returns for investing the retirement savings of tens of millions of American workers and that if Alternate 2 were selected, these investors may forgo such investments, disrupting cross-border investment and causing them to lose an essential source of diversification for the retirement savings of tens of millions of American workers. One commenter stated that based on a review of a random sample of 400 LP investments across all its funds, 255 contributed in excess of \$1,000,000 per fund.

A number of commenters requested that, regardless of which alternate the Treasury Department selects for the final rule, an *excepted transaction* include a transaction in which a *U.S. person* LP has secured a binding contractual assurance that its capital will not be used to engage in a transaction that would cause the LP to have made an indirect *prohibited transaction*. However, one commenter stated that this language would create a loophole unless it required the fund to make an assurance that none of the fund’s capital would be used for such a purpose.

Several commenters discussed challenges to compliance with either or both alternates. Multiple commenters requested further details regarding how the percentage of AUM would be calculated for the purposes of Alternate 1 given, for example, multiple co-investments in a single target by the same LP via multiple funds as well as the fact that fundraising from multiple LPs occurs over a period of time, causing a given LP’s percentage of total contributed capital to fluctuate during the fundraising period. Several comments related to whether the factors enumerated in § 850.501(a)(1)(iii)(A)(1)

through (5) via Alternate 1 (which would have excluded an investment from the definition of *excepted transaction* related to certain LP investments) or in § 850.501(a)(2) (which would have excluded an investment from the definition of *excepted transaction* related to a publicly traded security, a security issued by an investment fund, or an LP investment) apply to a given LP investment. Other commenters requested that certain types of LP engagement in a fund be conferred a safe harbor. One commenter discussed compliance costs for a non-*U.S. person* fund that has a mix of LPs that fall above and below the *excepted transaction* threshold. Another commenter stated that compliance with Alternate 2 would not be possible for a *U.S. person* investor contributing a smaller amount as they would lack leverage to gain access to the information necessary to determine whether a pooled investment fund had made an investment that would result in an indirect *covered transaction* by the LP.

The Treasury Department notes commenter preferences for Alternate 1, as well as the comments and data stating that a \$1 million dollar threshold could make the exception practically unavailable to many larger or institutional investors. However, the fact that an institutional investor generally makes investments as an LP investor that exceed a given dollar threshold is not dispositive to the analysis of that threshold. As discussed in the Proposed Rule, the rationale for excepting an LP investment by a *U.S. person* under a specified threshold into a pooled investment fund that then invests in a *covered foreign person* is that LP transactions above a certain threshold are more likely to involve the transfer of intangible benefits such as those often associated with larger institutional investors, including standing and prominence, managerial assistance, and enhanced access to additional financing. The Treasury Department has determined that an exception threshold based purely on an investment's proportion of a fund's overall AUM could be overinclusive by permitting large *U.S. person* investments that could be significantly allocated to underlying investments in one or more *covered foreign persons*. Even if an institutional *U.S. person* LP remained passive and did not provide managerial assistance to investment targets, a *covered foreign person* benefiting from the indirect investment could exploit the affiliation with an

established *U.S. person* LP for legitimacy and access to additional financing, among other benefits. In addition, given the size of certain investments that would be permitted under a pure AUM-based exception threshold, a *U.S. person* LP may have greater incentive and potentially greater ability to impact the success of a *covered foreign person* in which the relevant pooled investment fund invests.

To address this risk of intangible benefits, the Treasury Department declines to adopt the element of Alternate 1 linked to a pooled investment fund's AUM. Instead, in response to requests to raise the dollar threshold in Alternate 2, the Treasury Department has determined to apply an exception at \$2,000,000, or double that discussed in the Proposed Rule. This higher threshold is intended to facilitate compliance by *U.S. person* investors that are generally smaller in size and less likely to confer standing and prominence on an underlying *covered foreign person* by virtue of their association as an LP investor. The Treasury Department declines to eliminate the LP exception in the Final Rule, as suggested by one commenter, because the Final Rule is scoped to prevent the transfer of capital that is accompanied by intangible benefits, and certain de minimis *U.S. person* investments into pooled investment funds likely do not provide sufficient incentive or opportunity for the *U.S. person* to transfer such intangibles to a *covered foreign person*.

The Treasury Department has also considered the continued interest of institutional investors to have exposure to a wide variety of pooled investment funds in search of returns on capital. In response to commenter requests to maintain an exception for a *U.S. person* LP investor that has received a binding contractual assurance that its capital invested in the fund will not be used to engage in an indirect *prohibited transaction*, the Treasury Department has determined to modify the Final Rule to except *U.S. person* investments into a pooled investment fund if the *U.S. person* has obtained a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a *prohibited transaction* or *notifiable transaction*, as applicable, if engaged in by a *U.S. person*. For example, if a *U.S. person* LP investor invests in a fund that is not a *U.S. person* and that it *knows* is likely to invest in a *person of a country of concern* engaged in one or more of the three specified sectors, and the investor obtains a binding contractual assurance

that its capital in the fund will not be used to engage in a transaction that would be a *prohibited transaction* if engaged in by a *U.S. person*, the *U.S. person* LP investor's investment into the fund is not prohibited under the Final Rule. However, unless the *U.S. person* LP investor has also obtained a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a *notifiable transaction* if engaged in by a *U.S. person*, then the *U.S. person* LP investment is not excepted from the applicable notification requirements, and would be required to submit a notification when the fund undertakes a transaction that would be a *notifiable transaction* if undertaken by a *U.S. person*. Any assurance would need to be obtained prior to the *U.S. person* investment into the pooled investment fund for the exception to apply. If timely obtained, the exception would apply regardless of the overall dollar amount of the *U.S. person's* investment—that is, the test for an *excepted transaction* is disjunctive such that either an investment of \$2,000,000 or less, or an investment with the foregoing contractual assurance, is sufficient to trigger the exception.

This approach aligns with the goals of the Outbound Order because the *covered foreign person* would not benefit from a *U.S. person's* capital, and a *U.S. person* whose capital is not invested in a *covered foreign person* likely lacks the opportunity or incentive to provide intangible benefits to such *covered foreign person* that it might have provided had its capital been invested. The Treasury Department expects that such a binding contractual assurance would result in the *U.S. person* LP not receiving investment returns from those investments in a *covered foreign person* for which the *U.S. person's* capital was not used pursuant to such assurance.

The overall hybrid approach adopted in the Final Rule—that is, defining *excepted transaction* as any LP investment of \$2,000,000 or less, or any LP investment accompanied by a binding contractual assurance that the LP's capital invested in the pooled investment fund would not be made to effect an indirect *prohibited transaction* or *notifiable transaction*, as applicable—provides two distinct avenues to meet the criteria of an exception, addressing several issues raised by commenters.

Finally, the hybrid approach adopted in the Final Rule makes the exception accessible to a wide variety of investor sizes and types but retains the bright-line simplicity of Alternate 1. It eliminates the need to interpret and

apply the exclusionary factors enumerated in § 850.501(a)(1)(iii)(A)(1) through (5) of the Proposed Rule to particular LP agreements or participation in an LPAC or committee of an investment fund, and likewise obviates the complexities discussed by commenters of calculating a specific LP's percentage of AUM. As such, the Treasury Department removes from the Final Rule Note 1 to § 850.501 of the Proposed Rule, which described the application of those exclusionary factors no longer included in the Final Rule. The Treasury Department notes that an LP's participation on an advisory board or a committee of an investment fund does not, as a general matter, exclude such LP from the exception described in § 850.501(a)(1)(iii).

Rights Beyond Standard Minority Shareholder Protections

Under § 850.501(a)(2) of the Proposed Rule, certain transactions that otherwise qualified as *excepted transactions* would not qualify if a *U.S. person* obtained certain rights beyond standard minority shareholder protections as part of its investment. The Proposed Rule listed six minority shareholder protection rights:

- The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;
- The power to prevent an entity from entering into contracts with majority investors or their affiliates;
- The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;
- The right to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issued additional instruments conveying interests in the entity;
- The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such stock; and
- The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in § 850.501(a)(2)(i) through (v) of the Proposed Rule.

A few commenters provided responses to this section of the Proposed Rule. One commenter noted that in certain jurisdictions, including the PRC, rules for listed companies give shareholders owning no more than 3 percent of shares the right to put forward for a shareholder vote a

proposal to nominate directors. The commenter asked that the Treasury Department either make explicit that such a right is a standard minority shareholder protection or that an otherwise *excepted transaction* does not lose that status unless and until the *U.S. person* investor exercises their right to nominate. One commenter asked that the Treasury Department explicitly affirm that a transaction that provides only minority shareholder provisions is *excepted*. Another commenter suggested removing the restriction that any investment that affords a *U.S. person* rights outside standard minority shareholder rights will not constitute an *excepted transaction*.

The Treasury Department acknowledges that certain jurisdictions, including the PRC, may provide proposal rights to relatively low percentage shareholders in companies listed in those jurisdictions. The Treasury Department, however, does not consider these rights to be standard minority protection rights and declines to modify the Final Rule to accommodate this scenario. Standard minority protection rights are typically defensive in nature and are aimed at protecting minority shareholders' investments from actions taken by majority investors. A right to propose a slate of directors is a positive, not negative right, and goes beyond just protecting the investment of the minority shareholders. Being afforded such a right with respect to an investment in a *covered foreign person* would go beyond standard minority shareholder protections; as such, if provided as part of an investment that would otherwise be an *excepted transaction*, the investment will not have that *excepted* status.

The Treasury Department does not support the inclusion of an explicit affirmation that transactions providing only minority shareholder protections are *excepted*. The text of the Final Rule is clear that if an investment falls within the definition of 850.501(a)(1), it is an *excepted transaction*, unless it affords rights beyond standard minority shareholder protections.

Section 850.501(a)(2) of the Final Rule, therefore, remains largely unchanged from the Proposed Rule, with the exception of a technical edit discussed below. An investment in a *covered foreign person* that would otherwise be an *excepted transaction* under § 850.501(a) that affords a *U.S. person* rights beyond standard minority shareholder protections with respect to the *covered foreign person* (such as the rights listed above) is not an *excepted transaction*. The Final Rule adds the

phrase "standard minority shareholder" to the last sentence of § 850.501(a)(2) to clarify the reference to the "protections" described in paragraphs (a)(2)(i) through (vi). This edit is not intended to affect the substance of the requirement.

Buyout of Person of a Country of Concern Interest(s)

Section 850.501(b) of the Proposed Rule defined as an *excepted transaction* those transactions in which a *U.S. person* acquired all of the equity or other interests in an entity held by one or more *persons of a country of concern*, provided that following the acquisition, the entity no longer constituted a *covered foreign person*. The objective of the exception was to carve out from coverage a transaction that eliminated the likelihood that intangible benefits of a *U.S. person* could transfer to a *covered foreign person* because following the transaction, a *person of a country of concern* no longer would have any interest in the buyout target.

The Treasury Department received two comments on this section of the Proposed Rule. Both commenters recommended that the exception be expanded to include any acquisition of equity or other interest by a *U.S. person* in an entity if, following the acquisition, the entity no longer meets the definition of a *person of a country of concern*. According to the commenters, modifying the exception would be consistent with the Proposed Rule, which would permit *U.S. persons* to invest in entities that are minority-owned by *persons of a country of concern*.

The Treasury Department declines to expand the exception and adopts the text of the Proposed Rule without changes. Expanding the exception in the manner recommended by commenters would open a potential loophole with respect to joint ventures—if, for example, a *U.S. person* purchases a 51 percent interest in a *covered foreign person*, and a *person of a country of concern* retains 49 percent ownership, that transaction closely resembles the establishment of a joint venture. The exception, if expanded in the manner requested by commenters, would threaten to undermine § 850.210(a)(5), because *U.S. person* investors could effectively create joint ventures with *persons of a country of concern* in contravention of the Final Rule.

Intracompany Transfer

Section 850.501(c) of the Proposed Rule *excepted* from the definition of *covered transaction* certain intracompany transactions—that is, a transaction between a *U.S. person* and

its *controlled foreign entity* to support ongoing operations or other activities that are not *covered activities*. The goal of this exception was to avoid unintended interference with the ongoing operations of a *U.S. person's controlled foreign entity* even when that *controlled foreign entity* also met the definition of *covered foreign person*. The Treasury Department expected that the initial acquisition or establishment of the subsidiary would already have constituted a *covered transaction*, and where it did not, the potential impacts on the *U.S. person* from covering such intracompany transactions under the Proposed Rule likely would have outweighed the benefit in terms of the objectives of the Outbound Order. Although the definition of *covered transaction* in the Proposed Rule would not have usually applied to most routine intracompany activities such as the sale or purchase of inventory or fixed assets, the provision of paid services, or the licensing of technology, the intracompany transaction exception in the Proposed Rule nonetheless would have excepted intracompany transactions that would have been *covered transactions* but supported activities that were not *covered activities*. However, the exception would not have applied to greenfield investments or joint ventures, in order to prevent the exception from being exploited, e.g., via the use of an existing *controlled foreign entity* to shift operations into new *covered activities* or the acquisition of a *person of a country of concern entity* not engaged in a *covered activities* that then shifted operations into a *covered activity* for the first time.

Several commenters sought clarification regarding the application of the exception, stating that the Proposed Rule was ambiguous with respect to the line between transactions that would support ongoing operations and those that would fund *covered activities*. To rectify the ambiguity, one commenter stated that the rule should be revised to allow companies (1) to provide ongoing support for existing operations (i.e., predating the Outbound Order) in the prohibited category, so long as they provide notice; and (2) to be excepted from the notification requirement for ongoing operations (i.e., predating the Outbound Order) if they would not be prohibited under the Outbound Order.

One commenter interpreted the Proposed Rule to limit the exception to only transactions between a *U.S. person parent* and a direct *controlled foreign entity* subsidiary. Another suggested that the rule should apply to any intracompany transaction between a

U.S. person parent and *controlled foreign entity* subsidiary, except transactions that would be covered under § 850.210(a)(4).

Multiple commenters sought to expand the reach of the exception beyond the parent-subsidiary relationship between a *U.S. person* and its *controlled foreign entity*. A few commenters asked for expansion of the exception to include transactions between a *U.S. person* and its subsidiaries, both wholly-owned and less-than-wholly-owned. One commenter requested that the exception apply to all transactions between a *U.S. person parent* and any wholly owned subsidiary. Others suggested expanding the exception to include any transaction between a *U.S. person* and a corporate affiliate, or a transaction involving affiliates that are *knowingly directed* by a *U.S. person*, or a transaction undertaken by a *controlled foreign entity* of a *U.S. person*. One commenter suggested extending the exception to where a *U.S. person knowingly directs* a transaction by a foreign *parent* that is a publicly traded company. One commenter suggested establishing a threshold based on the financial significance of the transaction. Another commenter stated that the exception should apply to categories of *covered activities*, which would allow a *controlled foreign entity* to continue its activities within a particular category.

Some commenters suggested that the exception should extend to *U.S. person* investment in any *controlled foreign entity*, even if the *U.S. person* were not the *parent*. Others asked that the exception apply to transactions between entities operating in a *verein* network or other non-corporate forms that have the same purpose of facilitating routine operational activities.

One commenter asked for an illustrative list of intracompany transactions that would fall within the exception, and those that would not—i.e., when the *controlled foreign entity* begins engaging in a new *covered activity*.

The Treasury Department notes the requests for clarification with respect to the Proposed Rule regarding the intended scope of the exception for intracompany transfers under § 850.501(c). The purpose of the exception in the Final Rule is to carve out from the definition of *covered transaction* a transaction between a *U.S. person parent* and a *controlled foreign entity* subsidiary that supports new operations that are not covered activities or that maintains ongoing operations (including ongoing covered activities) in which the *controlled foreign entity* is

engaged at the time of the effective date of the Final Rule. The Final Rule amends this provision to make this explicit.

As written, the intracompany transfer exception in the Final Rule does not include an exception for intracompany transfers that support new operations that are *covered activities*. Because such transfers are not excepted, the exclusions for greenfield, brownfield, and joint venture investments in the exception in the Proposed Rule that cross reference to § 850.210(a)(4) and (5) have been removed.

In other words, the intracompany transfer exception in the Final Rule allows a *U.S. person parent* to continue to support its *controlled foreign entity* in maintaining any *covered activities* in which it has been engaging prior to the effective date of the Final Rule as well as any new non-covered activities. The intracompany transfer exception in the Final Rule also allows a *U.S. person parent* to support its *controlled foreign entity* that was established after the effective date of the Final Rule in its new or ongoing operations that are not *covered activities*. It does not permit a *U.S. person parent* to use its *covered foreign person* subsidiary to engage in new *covered activities*, nor does it allow a *U.S. person parent* to acquire control of a *person of a country of concern* and shift such entity's operations such that it engages in a new *covered activity*. Neither such activity is excepted by § 850.501(c) of the Final Rule, and both such activities are covered by the language of § 850.210(a)(4) (see the discussion of *covered transaction* above, specifically as regards "greenfield" and "brownfield" investments).

The Treasury Department does not support extending the intracompany transfer exception beyond the *U.S. person parent-controlled foreign entity* relationship—i.e., to other subsidiaries or affiliates, where a *U.S. person knowingly directs* a transaction involving an affiliate or a foreign *parent* to support ongoing operations of a subsidiary, or between a *U.S. person* and any *controlled foreign entity*, including those for which the *U.S. person* is not a *parent*. This exception is intended to be limited in scope and to avoid unintended consequences for the existing operations of a *U.S. person* that is already the *parent* of a *covered foreign person* in a *country of concern* and, importantly, can control such entity. Extending the exception beyond a *controlled foreign entity* could open significant loopholes and could result in transfers of intangible benefits to an entity in a *country of concern* that the relevant *U.S. person* does not control,

heightening concerns that such enhanced standing and prominence, managerial assistance, access to investment and talent networks, market access, and enhanced access to additional financing, could be shared onward with government authorities. Similarly, the Treasury Department declines to expand the exception to allow any intracompany transfer to a wholly-owned subsidiary, as one commenter requested, as this could open a loophole in the rule by extending the exception to the use of existing wholly-owned subsidiaries to fund operations in new line of *covered activities*, for example.

The Treasury Department also does not support the establishment of a threshold for the exception based on financial significance; the exception applies to any transaction of any value between a *U.S. person parent* and *controlled foreign entity* subsidiary to support new non-*covered activities* or maintain ongoing operations, including ongoing *covered activities*. The purpose of the Final Rule, consistent with the Outbound Order, is to require notification of, and prohibit, certain transactions that can be exploited by *countries of concern* to develop sensitive technologies and products. Therefore, the Treasury Department assesses that it is important to keep this exception, which would permit investments in an entity that constitutes a *covered foreign person*, narrow, with the intention of avoiding unnecessary disruption to operations of entities of which the *U.S. person* is a *parent*. Given the myriad varieties of intracompany transactions that could be excepted under this provision, the Treasury Department declines to provide an illustrative list in this Final Rule. To be clear, the exception under the Final Rule is not limited to direct *U.S. person parent-controlled foreign entity* relationships, as § 850.206(b) contemplates and captures a tiered ownership structure scenario where a *U.S. person* is an ultimate (but not immediate) *parent*. For the avoidance of doubt, to the extent that a *U.S. person* entity's subsidiaries or affiliates are also *U.S. persons*, then they have an independent obligation to comply with the Final Rule.

Binding, Uncalled Capital Commitment

The Proposed Rule included an exception for transactions made in fulfillment of a *U.S. person's* binding, uncalled capital commitment entered into prior to August 9, 2023, the effective date of the Outbound Order. The Treasury Department included this exception because a *U.S. person* could

not have been aware of the scope of the Outbound Order or the President's directive to the Treasury Department to implement the prohibition and notification requirements before the Outbound Order was issued. Indeed, the ANPRM, issued on the same day as the Outbound Order, included a discussion of the possible exception for transactions made pursuant to such commitments made prior to the issuance of the Outbound Order. The Proposed Rule, therefore, aimed to avoid a significant disruption to a *U.S. person* who entered into a binding capital commitment prior to August 9, 2023, and would have applied to any transaction made in fulfillment of a binding, uncalled capital commitment entered into prior to such date.

Multiple commenters provided responses to this section of the Proposed Rule. A few commenters expressed support for the Treasury Department's decision to provide for only prospective application of the rule, while several requested that the Treasury Department revise the exception for commitments entered into before August 9, 2023, to instead except commitments entered into before the effective date of the Final Rule. One commenter asked to revise the exception for transactions made pursuant to a binding, uncalled capital commitment entered into before August 9, 2023, to instead except commitments that the investor did not know were prohibited at the time the commitments were entered into.

A few commenters stated that limiting the exception to binding, uncalled capital commitments made prior to August 9, 2023, could lead to retroactive application if terms defined elsewhere, like *covered activities* and "covered national security technologies and products," were later broadened to cover more transactions without changing the applicable lookback date.

In response to the comments, and given certain fairness considerations raised by the commenters, the Treasury Department has revised § 850.501(d) of the Final Rule to provide an exception for transactions made after the effective date of the Final Rule (January 2, 2025) pursuant to a binding, uncalled capital commitment entered into before the effective date of the Final Rule.

If the Treasury Department broadens the scope of what is covered in subsequent rulemaking, the Treasury Department expects to consider whether it is appropriate to amend this provision to take into account binding commitments made after the specified date. The Treasury Department notes that the exception in § 850.501(d) is limited to transactions pursuant to

binding capital commitments made before the effective date (*i.e.*, where the *U.S. person* has made a binding capital commitment to a fund or similar investment entity prior to January 2, 2025 and the capital is then called after the effective date), recognizing that often a fund's investment targets have yet to be determined at the time of the capital commitment. This is in contrast to the situation where a *U.S. person* signs a binding agreement with or with respect to the investment target. In the later scenario, the exception in 850.501(d) will not apply and, if the transaction's *completion date* is after January 2, 2025, the notification and prohibition requirements are applicable, even if the binding agreement was executed prior to January 2, 2025. The Treasury Department notes that following the Outbound Order and the ANPRM, the Proposed Rule additionally put the public on notice that the Treasury Department intended to require notifications for certain transactions and prohibit other transactions, and the Final Rule includes a delayed effectiveness, allowing transaction parties time to ensure compliance with the Final Rule.

Loan Syndication Upon Default

Section 850.501(e) of the Proposed Rule included in the definition of *excepted transaction* the acquisition of a voting interest in a *covered foreign person* by a *U.S. person* upon default or other condition involving a loan or similar financing arrangement where the *U.S. person* lender was part of a syndicate of banks and could not initiate action vis-à-vis the debtor on its own and did not have a lead role in the syndicate. Consistent with the objectives of the Outbound Order, it excepted a narrow set of circumstances in which a *U.S. person* lender would have passively received an interest in a *covered foreign person* and, even after receiving such interest, lacked a role in the lending syndicate that would have been likely to create the opportunity for a *U.S. person* lender to convey intangible benefits to the *covered foreign person* debtor.

The Treasury Department received multiple comments on this provision of the Proposed Rule, including one expressing general support of the exception. Several comments requested revisions to the Proposed Rule, while one sought to remove the exception entirely. With respect to requested revisions, one commenter stated that, if foreclosures on collateral remain within the scope of the rule, then the Treasury Department should revise § 850.501(e)(2) to state that the

exception applies to any *U.S. person* bank that “is not the syndication agent,” because “lead role” is not common industry terminology. The Treasury Department intends to maintain this exception in the Final Rule, as the Treasury Department assesses that a *U.S. person* bank passively receiving an equity interest by virtue of a role in a lending syndicate is unlikely to result in the national security concerns identified in the Outbound Order. The Treasury Department agrees with the proposed revision to § 850.501(e)(2) to replace “lead role” with “syndication agent” and has made such change in the Final Rule. To the extent that a *U.S. person* lender in the syndicate is not the syndication agent yet can still initiate action on its own with respect to the debtor, then the exception would not apply.

A few commenters sought to expand the scope of the exception. One commenter requested the exception be broadened to include instances where the *U.S. person* lender has a larger role in the lending syndicate. Another commenter requested that the Treasury Department revise the rule to recognize that exercising control to protect an investment does not always create the intangible benefits the rule seeks to eliminate.

The Treasury Department declines to expand the exception to include *U.S.* bank lenders that play a larger role in the syndicate. With such a role comes a greater opportunity to cause the transfer of the equity and potentially to transfer intangible benefits to the *covered foreign person* debtor, which would undermine the goals of the Outbound Order and Final Rule. Although exercising control over an investment may not always result in the conveyance of intangible benefits, the Treasury Department assesses that greater control leads to a higher likelihood of such conveyance the rule seeks to address.

A few commenters requested that the Treasury Department revise the exception to apply to syndicates led by either a bank or a nonbank. The Treasury Department declines to expand the exception in the Final Rule to include nonbank lenders. The Treasury Department seeks to keep this exception limited, given that it involves a *U.S. person* lender taking possession of a voting interest in an entity to which it has provided capital, and notes that there are other exclusions under the Final Rule that may be applicable to *U.S. persons* who have foreclosed on an equity interest as a result of a loan default, for example, where the *U.S. person* did not know at the time of

making the loan that the pledged collateral was in a *covered foreign person*. (See the discussion of a *covered transaction* above.) *U.S. person* bank lenders are generally not in the business of managing and operating going concerns. To the extent that they take possession of a voting interest, it is primarily for the purpose of selling the interest to recoup the value of their loans, and hence the Treasury Department assesses there is a relatively lower likelihood of such banks conveying intangible benefits to the *covered foreign person*.

The Final Rule, therefore, remains largely unchanged from the Proposed Rule, except for the change in § 850.501(e)(2) discussed above. The exception, therefore, applies to the acquisition of a voting interest in a *covered foreign person* by a *U.S. person* upon default or other condition involving a loan or similar financing arrangement, where the loan was made by a syndicate of banks where the *U.S. person* lender in the syndicate cannot act on its own with respect to the debtor and is not the syndication agent.

Exception Regarding Designated Territories or Countries Outside of the United States

Recognizing shared objectives and in furtherance of the U.S. Government’s efforts to encourage partners and allies to address risks related to outbound investment, § 850.501(f) of the Proposed Rule excepted certain transactions with or involving a person of a country or territory outside of the United States designated by the Secretary in accordance with certain criteria (to be developed) that related to that country or territory’s own measures to address the national security risk related to certain outbound investment. The Treasury Department expected that any such country or territory would be designated after accounting for factors such as whether the country or territory was regulating outbound investment transactions involving technologies critical to a *country of concern’s* military, intelligence, surveillance, or cyber-enabled capabilities, which technologies were covered by such regulation, and whether such regulation addressed national security concerns related to outbound investment similar to those addressed by the Outbound Order. The Proposed Rule noted that the Treasury Department was considering taking into account other factors for purposes of designating a country or territory, including the extent to which a country or territory cooperated with the United States on issues of national security and whether it had in place and

is using related authorities and tools, such as export controls, to protect sensitive technologies and products.

The Proposed Rule would have provided for the application of this exception only to certain types of transactions with or involving a person of a designated country or territory. The Proposed Rule stated that the Secretary would determine the types of transactions for which the related national security concerns were likely to be adequately addressed by measures taken or that may be taken by the government of a country or territory outside the United States. Once developed, the Treasury Department stated that it would make the factors for the designation of a country or territory as well as types of transactions and/or activities that would be subject to the exception publicly available on the Treasury Department’s Outbound Investment Security Program website.

Several commenters addressed—and were generally supportive of—the proposed exception under § 850.501(f).

A few commenters offered a framework for how the Treasury Department should consider scoping which transactions should be subject to the exception, or general principles for applying the exception in the future. Others noted that the proposed exception could convey an unfair advantage to a foreign competitor unless the foreign program is equally stringent. Another commenter noted that the proposed exception would not provide an incentive for a country or territory to develop an equivalent program because it would affect only a small number of businesses in any given country, and that if the Treasury Department were to consider other national security measures (such as export controls) in evaluating a country or territory for designation, then the country may gain the benefit of the incentive without needing to establish its own outbound security program. One commenter asked that the Treasury Department revise the Proposed Rule to clarify that the Secretary will make public the bases for the decision to designate a country or territory. Another commenter requested that the criteria for the exception be “fully developed and specific” prior to the issuance of the Final Rule.

The Treasury Department appreciates commenters’ efforts to help develop a framework and to conceptualize the proposed exception and identify principles to guide its operation, as well as their interest in having the relevant consideration criteria be developed prior to the issuance of the Final Rule. Accordingly, the Treasury Department anticipates making available on its

Outbound Investment Security Program website more information on the factors the Secretary will consider when making a designation or determination. With respect to factors related to a designation, the Treasury Department intends to consider, for example:

- A country or territory's legal authority to regulate outbound investment;
- The extent to which the country or territory has in place and effectively utilizes a mechanism to regulate outbound investment involving sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and AI sectors;
- The extent to which the country or territory possesses the legal authority to prohibit or require notification for outbound investment transactions involving sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and AI sectors; and
- The extent to which the country or territory possesses legal authority to control the export of sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and AI sectors to any foreign persons anywhere they may be located.

With respect to determinations, the Treasury Department is currently considering adopting an approach similar to that described by commenters, where the "types of transactions" for which this exception is available may differ based on whether the country or territory is the "source of investment" or the "destination of investment."

In response to comments, the Treasury Department notes that any exceptions created under this section would ultimately apply to *U.S. persons*. These exceptions would lift the notification requirement or prohibition, as applicable, on a *U.S. person* with respect to certain transactions that would otherwise be *notifiable transactions* or *prohibited transactions*.

The Treasury Department does not expect a foreign country or territory's regime related to outbound investment to necessarily be identical to the Final Rule. The relevant focus remains on the national security risks related to and, as stated in the Outbound Order, potentially exacerbated by, outbound investment. As such, the Secretary, following relevant consultations, may determine that certain types of transactions involving those countries or territories should be excepted.

Accordingly, the Final Rule adopts at § 850.501(g) the exception found at

§ 850.501(f) of the Proposed Rule with minor modifications. The Final Rule clarifies that the national security risks related to outbound investment to be addressed by a country or territory outside of the United States must be similar to those described by the Outbound Order. Additionally, consistent with the national emergency declared in the Outbound Order, the risks must be related to, rather than be posed by outbound investment. The Treasury Department assesses that these changes will provide the Secretary with greater flexibility to consider the full range of a country's or territory's legal authorities and programs when making designations or determinations under the rule. In addition, to afford flexibility to respond to changes in the international threat environment, the Treasury Department has added § 850.501(g)(4) to provide the Secretary with the authority to rescind a designation or determination if determined to be appropriate. The Secretary's rescission of a designation or determination would apply prospectively and would be announced publicly.

Excepted Transaction—Final Rule Summary

The Final Rule implements ten categories of *excepted transaction*, including (subject to conditions, in some instances):

- An investment by a *U.S. person* in a publicly traded security;
- An investment by a *U.S. person* in a security issued by a registered investment company, such as an index fund, mutual fund, or exchange traded fund, or issued by any company that has elected to be a business development company;
- An investment of a certain size by a *U.S. person* LP in a pooled investment fund;
- An investment by a *U.S. person* in a derivative;
- A *U.S. person's* full buyout of all interests of any *person of a country of concern* in an entity, such that the entity is not a *covered foreign person* following the transaction;
- An intracompany transaction between a *U.S. person parent* and its *controlled foreign entity* that supports new operations that are not covered activities or that maintains ongoing operations, including ongoing covered activities;
- Fulfillment of a *U.S. person's* binding, uncalled capital commitment entered into prior to the effective date of the Final Rule;
- The acquisition of a voting interest in a *covered foreign person* upon default

or other condition involving a loan, where the loan was made by a lending syndicate and a *U.S. person* participated passively in the syndicate;

- The receipt of employment compensation by an individual in the form of stock or stock options, or the exercise of such options; and
- Certain transactions with or involving a person of a country or territory outside the United States that has been designated by the Secretary in accordance with provisions set forth in § 850.501(g) of the Final Rule.

§ 850.502—National Interest Exemption

The Outbound Order authorizes the Secretary to "exempt from applicable prohibitions or notification requirements any transaction or transactions determined by the Secretary, in consultation with the heads of relevant agencies, as appropriate, to be in the national interest of the United States." As described in the Proposed Rule, the Secretary, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may have determined that a *covered transaction* is in the national interest of the United States and therefore, exempted it from certain provisions of the Proposed Rule. The Treasury Department anticipated that this exemption of a *covered transaction* would have been granted by the Secretary only in exceptional circumstances.

Section 850.502 of the Proposed Rule described the process and considerations for the Secretary's authority to exempt a *covered transaction* determined to be, in consultation with the heads of relevant agencies, as appropriate, in the national interest of the United States. Any determination that a *covered transaction* was in the national interest of the United States and therefore exempt from certain provisions of the Proposed Rule would have been based on a consideration of the totality of the facts and circumstances. The Proposed Rule stated that the Treasury Department anticipated such determination may have been informed by, among other considerations, the transaction's effect on critical U.S. supply chain needs, domestic production needed for projected national defense requirements, the United States' technological leadership globally in areas affecting U.S. national security, and the impact on national security from prohibiting a given transaction. The Proposed Rule stated that the Treasury Department would not consider granting retroactive waivers or

exemptions (*i.e.*, waivers or exemptions after a prohibited transaction has been completed).

To request a national interest exemption under the Proposed Rule, a *U.S. person* would have needed to submit certain information to the Treasury Department, including a description of the scope of the relevant transaction, the basis for the request, and an analysis of the transaction's potential impact on the national interest of the United States. The Proposed Rule noted that the Treasury Department may have requested that a *U.S. person* submit information, including some or all of the information required under § 850.405, as well as additional details based on the facts and circumstances.

The Treasury Department received comments on § 850.502 of the Proposed Rule. Commenters generally expressed support for this section. Several commenters requested that the Treasury Department develop clearer and more specific considerations that will be evaluated in determining whether a *covered transaction* is in the national interest of the United States, and therefore exempt from applicable provisions of the rule. Commenters requested that the Treasury Department expand the considerations that will be evaluated in a national interest determination, to include concerns related to the impact on human life, the environment, and finances of *U.S. persons*.

While understanding the interest of commenters in expanding the enumerated considerations that may inform a national interest determination, the Treasury Department declines to include additional enumerated considerations or clarifications in the Final Rule. As discussed in the Proposed Rule, any determination will take into account the totality of the relevant facts and circumstances and may be informed by, among other considerations, the transaction's effect on critical U.S. supply chain needs, domestic production needed for projected national defense requirements, the United States' technological leadership globally in areas affecting U.S. national security, and the impact on national security from prohibiting a given transaction. For the avoidance of doubt, the considerations in the Final Rule are not exclusive, and additional considerations may inform any determination by the Secretary. The Treasury Department anticipates providing information on the process and requirements for any national interest exemption request on its

Outbound Investment Security Program website.

One commenter requested clarity as to whether individuals with delegated authority can seek an exemption on behalf of a *U.S. person*. Similar to the submission of a notification which requires a certification signed by the chief executive officer or other duly authorized designee of the person filing pursuant to § 850.203, the Treasury Department has added in the Final Rule a provision at 850.502(d) to require a certification that can be signed by a duly authorized designee according to § 850.203 in order to help ensure the provision of accurate and complete information to the Treasury Department. The Treasury Department notes that a certification based on misrepresentation, concealment, or omission of material fact may impact the validity of a national interest determination.

One commenter suggested that the rule include clear timelines for both the requesting person and the Treasury Department in reaching a determination and seeking additional information about the *U.S. person's* interactions with the *covered foreign person* and any mitigation of potential threats from the *covered foreign person*. Additionally, the commenter requested that the Treasury Department publicize the granting of a national interest exemption so that others can benefit from understanding the criteria that meet the requirements. Another commenter requested that the Treasury Department issue additional guidance on the process for submitting information related to the transaction for which this exemption is sought, and that any such process be developed with business practicalities in mind. As noted above, the Treasury Department intends to provide information, in accordance with § 850.502(c), to be submitted in connection with any national interest exemption request on its Outbound Investment Security Program website by the effective date of the Final Rule. As stated in the Proposed Rule, a *U.S. person* requesting a national interest exemption will need to submit certain information to the Treasury Department, including a description of the scope of the relevant transaction, the basis for the request, and an analysis of the transaction's potential impact on the national interest of the United States. The Treasury Department may request that a *U.S. person* submit information that may include some or all of the information required by § 850.405, as well as additional details based on the facts and circumstances. In addition to the required information, as a general

matter, the Treasury Department welcomes additional information that the *U.S. person* deems relevant, including with respect to the *U.S. person's* interaction with the *covered foreign person* and views on mitigation of any national security risk, among others.

At this time, the Treasury Department is not instituting a timeline for its internal review and determination. After the Outbound Order and Final Rule are implemented, the Treasury Department may consider instituting such a timeline or providing additional information.

One commenter requested that the Treasury Department establish an appeals process and timeline in the event a request for an exemption is denied. The Treasury Department declines to establish such a process at this time and will be informed by experience.

One commenter suggested that the Treasury Department establish, prior to the issuance of the rule, the binding conditions to which an exempt *covered transaction* may be subject. The Treasury Department declines to establish in the Final Rule the binding conditions that a *covered transaction* may be subject to in connection with a granted national interest exemption. Because any determination will be based on a consideration of the totality of relevant facts and circumstances, the Treasury Department is unable to speculate as to what binding conditions may be necessary in a determination by the Secretary that a *covered transaction* is exempt under § 850.502.

The Final Rule adopts § 850.502 as set forth in the Proposed Rule with a modification to require that any information and documents submitted in relation to a national interest determination request be subject to the certification described in § 850.203. As noted above, a certification based on misrepresentation, concealment, or omission of material fact may impact the validity of a national interest determination.

Under § 850.502 of the Final Rule, the Secretary, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may determine that a *covered transaction* is in the national interest of the United States and therefore is exempt from applicable provisions in Subparts C and D of this part (excluding §§ 850.406, 850.603, and 850.604). Such a determination may be made following a request by a *U.S. person* on its own behalf or on behalf of its *controlled foreign entity*. Any such determination will be based on consideration of the totality of the

relevant facts and circumstances and may be informed by the criteria discussed, although the Treasury Department reiterates this is not an exclusive list of criteria. A *U.S. person* seeking a *national interest exemption* shall submit relevant information to the Treasury Department regarding the transaction and shall articulate the basis for the request, including the *U.S. person's* analysis of the transaction's potential impact on the national interest of the United States. The Treasury Department may request additional information that may include some or all of the information required under § 850.405. A certification must be submitted pursuant to § 850.203. Electronic filing instructions will be available via the Treasury Department's Outbound Investment Security Program website. A determination that a *covered transaction* is exempt under this section may be subject to binding conditions, and to be valid must be provided to the subject *U.S. person* in writing and signed by the Assistant Secretary or Deputy Assistant Secretary of the Treasury for Investment Security.

The Treasury Department reiterates that it will not grant retroactive waivers or exemptions (*i.e.*, waivers or exemptions after a *prohibited transaction* has been completed).

Subpart F—Violations

Subpart F of the Proposed Rule (§§ 850.601 through 850.604) described conduct that would be treated as a violation of the Proposed Rule. Such conduct would have included taking any action prohibited by the Proposed Rule, failing to take any action required by the Proposed Rule within the timeframe and in the manner specified, and making materially false or misleading representations to the Treasury Department when submitting any information under the Proposed Rule. The Proposed Rule would also have prohibited any action that evades or avoids or has the purpose of evading or avoiding any of the prohibitions of the Proposed Rule. The Treasury Department did not receive any comments on Subpart F of the Proposed Rule.

The Final Rule implements Subpart F as proposed, with the exception of a clarification to § 850.603 to include “omission.” The Treasury Department is making this change to clarify that in addition to any materially false or misleading information submitted pursuant to the Final Rule, the omission of any such material information would also constitute a violation of the Final Rule.

Subpart G—Penalties and Disclosures

Subpart G of the Proposed Rule (§§ 850.701 through 850.704) described the civil and criminal penalties that may be imposed for violations of its requirements up to the maximum amount set forth in section 206 of IEEPA. Furthermore, the Proposed Rule would have permitted the Secretary, in consultation with the heads of relevant agencies, to take action to nullify, void, or otherwise compel divestment of any *prohibited transaction* entered into after the effective date of the Final Rule. The Proposed Rule also described the process for a *person* that may have violated applicable provisions to submit a voluntary self-disclosure.

The Treasury Department received comments to this subpart. One commenter suggested the rule include a process for appealing a penalty that is imposed or provide some other administrative or legal remedy. Other commenters requested that the Treasury Department clarify whether a non-*U.S. person* would face penalties for violations of the rule, and if so, under what circumstances, and requested specific guidance for non-*U.S. persons*.

The Treasury Department declines to establish an appeals process at this time. Any penalty will be imposed based on a totality of the facts and circumstances. The Treasury Department anticipates providing additional information regarding compliance with the program at a later date. The Treasury Department also notes that the Final Rule places certain obligations solely upon *U.S. persons*.

The Final Rule makes technical edits to the text of the provisions of Subpart G. Under the Final Rule, the Treasury Department may impose a civil penalty on any person that violates the Final Rule. In § 850.701(a)(1), the Final Rule clarifies that the maximum civil penalty that may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any order, regulation, or prohibition issued under IEEPA, including any provision of the Final Rule, is the greater of twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed or \$250,000, which amount is subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The Final Rule at § 850.701(c) notes that, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, notice of the maximum penalty which may be assessed under this section will

be published in the **Federal Register** and on Treasury's Outbound Investment Security Program website on an annual basis on or before January 15 of each calendar year. As of the date of issuance of this Final Rule, the current maximum civil penalty under IEEPA is an amount not to exceed the greater of an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed or \$368,136. 89 FR 2139 (published January 12, 2024). The Secretary may also refer potential criminal violations under the Final Rule to the Attorney General. Regarding a voluntary self-disclosure made for actual or apparent violations of the Final Rule, the Treasury Department will take such disclosure into account as a mitigating factor in determining the appropriate response, including the potential imposition of penalties, if the Treasury Department determines that there was, in fact, a violation.

Subpart H—Provision and Handling of Information

§ 850.801—Confidentiality

Section 850.801 of the Proposed Rule described the Treasury Department's proposal to treat as confidential, subject to limited exceptions, information and documentary materials that would have been submitted pursuant to its provisions and were not otherwise publicly available.

The Proposed Rule would have permitted the Treasury Department to disclose information or documentary materials, subject to appropriate confidentiality and classification requirements, where such materials were relevant to any judicial or administrative action or proceeding; provided to Congress; or provided to any domestic governmental entity or to a foreign governmental entity of a *U.S. partner* or ally, where the information or materials was important to the national security analysis or actions of such governmental entity or the Treasury Department. Additionally, the Proposed Rule would have permitted the Treasury Department to disclose information to third parties with the submitter's consent, and it also permitted the Treasury Department to use the information gathered to fulfill its obligations under the Outbound Order, potentially including publication of anonymized data.

As explained in the Proposed Rule, the Treasury Department was considering whether there were additional circumstances where disclosure of otherwise confidential information should be permitted. One

proposal considered would have allowed the Treasury Department to disclose such information to the public as and when the Secretary determined that such disclosure was in the national interest. The Treasury Department expected that such an exception would be rarely invoked and limited to circumstances in which the Secretary identified a pressing national interest that disclosure could help to address. This exception would not have superseded any applicable statutory restrictions that may constrain the sharing of certain categories of information, such as information that a party has identified as protected trade secrets information. The Treasury Department invited comments on the considerations that it should take into account in identifying the scope of this potential additional exception to confidential treatment, the standard that should apply to the Secretary's determination, and what safeguards may be applicable to disclosure when such an exception applies.

Multiple commenters provided perspectives on § 850.801 of the Proposed Rule. One commenter requested that the Treasury Department limit the sharing of information among U.S. Government agencies to only what is necessary to develop the analysis and recommendations required by the Outbound Order. The commenter also suggested retaining the other information sharing exceptions, particularly the exception for supporting judicial or administrative procedures. Another commenter expressed concerns about the Treasury Department's ability to share confidential business information submitted by parties with foreign government entities, potentially placing U.S. companies at a competitive disadvantage, and urged clarification that such information may be shared only to the extent "necessary" for the purpose of national security. One commenter requested the Treasury Department compile a monthly report on the distribution of notified investments across geography and industry, among other categories, to be "shared with the relevant security or intelligence agency."

While the Treasury Department recognizes the importance of safeguarding sensitive information, limiting the ability of the Treasury Department to share information among U.S. Government agencies to only what is necessary to develop the required information and recommendations to the President would undermine certain directives in the Outbound Order. For example, the Outbound Order directs

the Treasury Department to consult with relevant departments and agencies in assessing the effectiveness of the Final Rule. Additionally, the Treasury Department, as stated in the Proposed Rule, intends to analyze *notifiable transactions*, in consultation with the Department of Commerce and, as appropriate, other relevant agencies. The Treasury Department emphasizes the importance of consulting with relevant agencies in furtherance of effective administration of the Final Rule.

With respect to the sharing of information with foreign governments of a United States partner or ally, the Treasury Department declines to change the standard under the exception to the confidentiality provision in § 850.801(b)(3) from "important" to "necessary" and instead retains the language "important to the national security analysis or actions of such governmental entity or the Department of the Treasury." The Treasury Department views this as a high bar and intends that any sharing of information would be subject to appropriate safeguards, including appropriate confidentiality and classification requirements, which the Treasury Department takes seriously.

In response to the commenter suggestion regarding monthly data being shared with the relevant security or intelligence agencies, the Outbound Order directs the Treasury Department to provide to the President, through the Assistant to the President for National Security Affairs, an assessment of the effectiveness of the Outbound Investment Security Program in addressing national security threats identified in the Outbound Order as well as appropriate recommendations. Such assessment and/or recommendations may include anonymized data pertaining to *notifiable transactions*. The Treasury Department is finalizing § 850.801 as set forth in the Proposed Rule with the addition of the proposal discussed in the Proposed Rule (but not added to proposed regulatory text at that time) to permit the disclosure of information where the Secretary determines such disclosure to be in the national interest, as discussed further below. Section 850.801(a) of the Final Rule provides that information or documentary materials not otherwise publicly available that are submitted to the Treasury Department in accordance with its provisions will not be disclosed to the public, except as required by law or as set forth in the exceptions. As with the Proposed Rule, the Final Rule sets out limited circumstances under which

the Treasury Department is permitted to disclose information or documentary materials, subject to appropriate confidentiality and classification requirements. Such circumstances include where information and documentary materials are (1) relevant to any judicial or administrative action or proceeding, (2) provided to Congress, or (3) provided to any domestic governmental entity or to a foreign governmental entity of a U.S. partner or ally, where the information or materials are important to the national security analysis or actions of such governmental entity or the Treasury Department. The Final Rule, like the Proposed Rule, also permits the Treasury Department to disclose to third parties information or documentary materials when the person who submitted or filed the information or documentary materials has consented to its disclosure to such third parties. The Final Rule also specifies that the Treasury Department may use the information gathered pursuant to the rule to fulfill obligations under the Outbound Order, which may include publication of anonymized data. An additional circumstance in which information may be disclosed is included in the Final Rule at § 850.801(d).

The Treasury Department is implementing in the Final Rule the proposal discussed in the preamble to the Proposed Rule that will allow the disclosure of information when the Secretary determines such disclosure is in the national interest. Factors that the Secretary may consider when determining if disclosure is in the national interest may include whether such disclosure will further national security interests, address law enforcement needs, or promote compliance with the rule. Circumstances in which the Secretary may determine the disclosure of information to be in the national interest can include, for example, identifying *persons of a country of concern* that are engaged in *covered activities* so that *U.S. persons* are on notice that the Treasury Department has determined such persons to be *covered foreign entities*. The Treasury Department anticipates this exception to be invoked rarely and limited to circumstances in which the Secretary identifies a national interest that disclosure could help to address. The Treasury Department recognizes that a determination as to when the disclosure of information is in the national interest is a significant decision that requires taking into account a range of considerations and accordingly should be made only by a

senior official. Consistent with this, the Final Rule provides that any such determination may not be delegated below the level of the Assistant Secretary of the Treasury.

Subpart I—Other Provisions

§ 850.903—Severability

Section 850.903 of the Proposed Rule provided that if any provision of the Final Rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity would not affect other provisions, or application of such provisions to other persons or circumstances, that can be given effect without the invalid provision or application. The Treasury Department did not receive any comments on § 850.903 and adopts it without change in the Final Rule.

If any provisions of this Final Rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions, or application of such provisions to other persons or circumstances, that can be given effect without the invalid provision or application. Each provision of the Final Rule and application thereof serves an important, related, but distinct purpose; provides a distinct benefit separate from, and in addition to, the benefit provided by other provisions and applications; is supported by evidence and findings that stand independent of each other; and is capable of operating independently such that the invalidity of any particular provision or application would not undermine the operability or usefulness of other aspects of the Final Rule. Based on its analysis, the Treasury Department believes that although more limited application would change the magnitude of the overall benefit of the Final Rule, it would not undermine the important benefit of, and justification for, the Final Rule's application to other persons or circumstances. The qualitative and quantitative benefits of the Final Rule outweigh the costs for all persons and circumstances covered by the Final Rule.

For example, but without limitation, if application of the Final Rule to a *U.S. person* with respect to the actions of its *controlled foreign entity*, is held to be invalid, it is the Treasury Department's intent that the Final Rule remain in effect as to all other persons covered by the Final Rule. Similarly, if the prohibition on a *U.S. person knowingly directing* a transaction by a non-*U.S. person* is held to be invalid, it is the Treasury Department's intent that the Final Rule remain in effect as to the

prohibition on *U.S. persons* from engaging in *prohibited transactions*. The purpose of the Final Rule is to restrict those investments by *U.S. persons* that present a likelihood of conveying both capital and intangible benefits that can be exploited to accelerate the development of sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities of *countries of concern* in ways that negatively impact the national security of the United States. It is consistent with this purpose to cover activity of *U.S. persons* as defined in the Final Rule if the application of the rule to a subcategory of persons or to a subcategory of activity is held to be invalid.

The key requirements of the Final Rule—the prohibition or notification of certain *covered transactions*—are likewise severable. The *covered transactions* that are subject to notification are distinct from those that are prohibited, and the two provisions operate independently of each other. The Treasury Department therefore intends for each of these requirements in the Final Rule to be severable from each other and to be applied to the extent possible, even if its application is limited.

§ 850.904—Reports To Be Furnished on Demand

The Proposed Rule set forth at § 850.904 that any person may be required to furnish information under oath regarding any act or transaction subject to part 850. Pursuant to § 850.904, the Treasury Department could have requested this information at any time and conduct investigations, hold hearings, take depositions, and compel witnesses to testify through subpoenas, among other things.

A commenter requested clarification in the rule that any inquiry made of legal counsel under this section should be conducted subject to the attorney-client privilege applicable in the relevant jurisdiction. The Treasury Department declines to specifically mention any particular defense, such as the attorney-client privilege, to a demand for information under this provision. Individuals required to provide such information may raise such defenses as applicable and appropriate, although the availability of such defenses does not excuse a party from the requirements of this rule.

Another commenter suggested the requirement to furnish information was overly broad, and recommended narrowing its scope to only functions necessary, in the commenter's view, for enforcement of the rule. Additionally,

the commenter requested the Treasury Department make revisions including by removing the language requiring the information to be submitted under oath, in the form of reports or otherwise, as well as the language permitting the inquiry to be at any time. The commenter also requested narrowing the Treasury Department's authority to request information from "any person" about any "act or transaction" subject to the Proposed Rule to instead requesting information only from a *person* involved in a transaction subject to the Proposed Rule and about such transaction. Lastly, the commenter requested limiting the Treasury Department's investigative authority under § 850.904 to conducting investigations and requesting information aided by civil administrative subpoenas.

Limiting the Treasury Department's ability to seek information in connection with transactions subject to part 850 as suggested by the commenter would undermine the Treasury Department's ability to investigate and enforce violations of the Final Rule. Given the focus of the Final Rule on obligations on *U.S. persons* and the range of transactions within the definitions of *covered transaction* and *excepted transaction*, greater rather than less flexibility in the Treasury Department's avenues for obtaining information is important. Under IEEPA, the President has broad authority to investigate transactions in which any foreign person has an interest. Section 10(ii) of the Outbound Order grants the full scope of these investigative powers to the Secretary to carry out the purposes of the Outbound Order, including to investigate and make requests for information relative to notifiable or prohibited transaction not only from parties to such transactions but also from other relevant persons. Section 850.904 implements this authority and is consistent with longstanding OFAC practice under IEEPA (e.g., 31 CFR 501.602). Notably, the text of the provision limits the Treasury Department's information gathering power to acts or transactions subject to part 850.

The Final Rule makes no change to the text of proposed § 850.904. Under the Final Rule, any person may be required to furnish information under oath regarding any act or transaction subject to its provisions. The Treasury Department can request this information at any time and the Treasury Department has the authority to conduct investigations, hold hearings, take depositions, and compel witnesses to

testify through subpoenas, among other things.

D. Other Comments

Compliance Burden

Several commenters noted that the Proposed Rule would impose what the commenters believed were significant compliance costs on U.S. companies, particularly small businesses, U.S. investors, and also foreign persons. One such commenter stated that the compliance costs for U.S. investors would be passed along to businesses, limiting resources to advance innovation. Another commenter noted that for venture capital investments in particular, it would be difficult and costly to determine who is *a person of a country of concern*, and that regulatory changes in the PRC were making it more challenging to obtain information on PRC entities, which will make it difficult for *U.S. persons* to comply with this requirement.

As described below in Section IV, the Treasury Department assessed the costs and benefits of the Final Rule. As noted in that analysis, while the Final Rule will impose some compliance costs on U.S. companies, investors, and foreign persons, the Treasury Department estimates that the Final Rule will apply to a relatively modest volume of potential *covered transactions*, and that these costs, in turn, will be relatively modest compared to the size of potential investment opportunities. The Treasury Department also notes that for at least some transactions and investors, the level of information collection, retention, and diligence necessary to comply with the Final Rule, to include determining whether a transaction party is *a person of a country of concern*, may not give rise to any costs beyond what would be incurred during the course of routine due diligence in the absence of the Final Rule.

Compliance Assistance

Several commenters requested the Treasury Department develop tools to assist compliance with the rule, such as public guidance or advisories, frequently asked questions (FAQs), sample due diligence questionnaires, red flags and case examples, or recommended contractual language, as well as enforcement guidelines.

Some commenters requested that the Treasury Department include specific fact patterns in the regulatory text, not just in the preamble to the rule, to illustrate transactions that might be covered, prohibited, or excepted, or that the Treasury Department publish these examples as FAQs.

Commenters also requested that the Treasury Department develop a formal or informal process, such as a hotline, for providing interpretive guidance or advisory opinions on specific transactions. Some commenters requested this process be established before the rule is effective. One commenter pointed to similar practices by other components of the Treasury Department as well as other departments and agencies that administer national security-related regulatory programs, such as the Departments of Commerce, Justice, and State, as well as the SEC.

Two commenters requested the Treasury Department periodically publish non-confidential or anonymized information in its possession about specific transactions to minimize program compliance costs, as well as unintentional violations.

One commenter requested that the Treasury Department publish guidance on *prohibited transactions* and *notifiable transactions* that were undertaken between August 9, 2023 (*i.e.*, the date of the Outbound Order), and the effective date of the rule. The commenter recommended that, in the alternate, the Treasury Department could clarify that *prohibited transactions* undertaken during this time period will not be subject to enforcement/penalties if parties submit a notification after the issuance of the rule, while *notifiable transactions* undertaken during an interim period could be notified within a certain period (*e.g.*, 100 days) after the effective date of the rule. In response, the Treasury Department notes that the obligations under the Final Rule take effect upon the effective date; only transactions with a *completion date* on or after the effective date are subject to the notification requirements or prohibition, as applicable.

The Treasury Department recognizes that the Final Rule imposes new requirements about which further information may be helpful. To assist *U.S. persons* in compliance with the Final Rule, the Treasury Department anticipates providing additional information following publication of the Final Rule, including through its Outbound Investment Security Program website. The Treasury Department also anticipates engaging in stakeholder outreach and education on the requirements in the Final Rule. In providing any additional information or materials, the Treasury Department will consider commenter requests to publish more specific and detailed materials to assist in due diligence. Regarding the request to include specific examples of

fact patterns in the regulatory text, the Treasury Department assesses it is more efficient to publish examples through its Outbound Investment Security Program website rather than through a rulemaking. Doing so will allow the Treasury Department to provide and update such examples in a timely manner to support industry compliance.

At this time, the Treasury Department does not expect to establish an advisory opinion process to allow parties to request determinations of whether a particular transaction is *covered*, *notifiable*, or *prohibited*. Such a process does not exist for CFIUS reviews, for example, and, given the complexity and volume of potential transactions, would not be an efficient allocation of resources for the Office of Investment Security. Instead, as noted above, the Treasury Department anticipates making additional information available that can assist *U.S. persons* in understanding and complying with the Final Rule.

Competitiveness Considerations and Other Consequences

A number of commenters suggested that certain requirements in the Proposed Rule would affect the international competitiveness of U.S. investors, asset managers, and businesses in certain industries. Some commenters focused on the additional due diligence obligations with which U.S. investors must comply. Others emphasized the need for a multilateral approach so that foreign competitors are subject to similar requirements. Other commenters suggested that the proposed exception for transactions under § 850.501(f)(1) involving persons of a country or territory outside the United States designated by the Secretary after taking into account whether the country or territory is addressing national security concerns posed by outbound investment, would convey an unfair advantage on a foreign competitor unless the foreign program is equally stringent. Two commenters argued that limitations on U.S. investment in the semiconductor industry in a *country of concern*, to include the notification and prohibition requirements related to *AI systems*, would put U.S. businesses in the semiconductor and automotive industries at a disadvantage when compared to foreign competitors. One commenter suggested that the requirements would disadvantage U.S. LPs who would be required to seek additional information and governance rights compared to non-U.S. LPs investing in non-U.S. funds.

The Treasury Department recognizes that the obligations created by the Final Rule will impose certain costs and

restrictions on *U.S. persons*. To minimize those costs and restrictions, the rule focuses on only those types of U.S. investments that present a likelihood of conveying both capital and intangible benefits that can be exploited to accelerate the development of sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities of such countries in ways that negatively impact the national security of the United States. Additionally, the Treasury Department is committed to working with its allies and partners to stand up their own similar mechanisms to help ensure that foreign capital and intangible benefits do not merely fill investment gaps resulting from the Final Rule.

Regarding the concern over potential designations under § 850.501(g)(1), the Treasury Department notes that any exceptions created under that section would ultimately benefit *U.S. persons*. These exceptions would permit or not require a notification by a *U.S. person* with respect to certain transactions that would otherwise be a *notifiable transaction* or a *prohibited transaction*.

Several commenters shared their views on possible unintended consequences of the Proposed Rule, including general concerns around the breadth of the rule impacting U.S. and other companies' ability to conduct global business, as well as concerns about impacts to U.S. competitiveness, innovation, and national security.

One commenter expressed concern about expansion of the scope of countries listed as "countries of concern" given past implementation of certain national security-related laws and regulations, citing the 2018 imposition of tariffs on steel imports under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) as an example.

Another commenter suggested that U.S. venture capital firms could become uncompetitive for deals involving a *country of concern* or in which determining the potential involvement of a *country of concern* takes time. The commenter also predicted a chilling effect from the compliance related to distinguishing between transactions that would be notifiable versus those that would be prohibited. A few commenters argued that the Proposed Rule could permit non-U.S. investors to more easily engage in transactions, pushing particular companies in these leading-edge sectors away from the United States and thus harming our national security and competitive edge.

Some commenters suggested that the Proposed Rule could impact investment

activities of third-country entities and thereby increase the instability of global supply chains or impact U.S. investors' ability to do business in the broader Asia region. One commenter requested that the Treasury Department ensure the rule does not disrupt the day-to-day management of global diversified portfolios invested in publicly traded securities.

The Treasury Department notes that the Final Rule seeks to address the national security threat described in the Outbound Order while minimizing unintended consequences. Accordingly, the Final Rule includes tailored definitions and descriptions of terms and elements to appropriately scope coverage and facilitate compliance by *U.S. persons*. Where appropriate and consistent with the goals of the Outbound Order, the Treasury Department has included exceptions to the coverage of the rule, to seek to minimize unintended consequences for *U.S. persons*.

The Treasury Department notes concerns around the practical effects of due diligence requirements associated with the Final Rule, especially as they relate to the timelines of private investments. As noted above, the Treasury Department intends to publish compliance resources and information on its Outbound Investment Security Program website to assist with implementing the Final Rule. In addition, as required by the Outbound Order, the Secretary of the Treasury, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, will assess, within one year of the effective date of the Final Rule and periodically thereafter, whether to amend the rule.

International Engagement

The Treasury Department received several comments related to U.S. Government engagement with foreign countries and territories on the Outbound Order and requirements described in the Proposed Rule. Several commenters expressed support for substantive engagement between the U.S. Government and foreign countries on the Outbound Order and similar programs being considered by foreign jurisdictions. One commenter recommended that the U.S. Government work with foreign partners to identify regulatory options for outbound investment screening reviews that are easier to implement and administer and are tailored to the particular investment relationship that these countries have with a *country of concern* and the national security risks arising therefrom.

Some commenters called out specific foreign jurisdictions with whom to prioritize coordination, including the European Union and South Korea. One commenter recommended that the Treasury Department engage with PRC commercial regulators to increase awareness of the Proposed Rule's objectives and compliance requirements for PRC businesses, in order to assist U.S. firms that are conducting due diligence and facilitate implementation of the Proposed Rule.

Other commenters noted potential outcomes they believe could arise if the U.S. Government does not engage substantively with foreign partners and align the approach in the Final Rule with those taken by foreign partners. These include the risk of backfilling capital and associated benefits from other economies, as well as disadvantaging U.S. firms and harming U.S. competitiveness.

As noted in the Proposed Rule, the Treasury Department recognizes the importance of working with our partners and allies as they explore options to address national security concerns related to outbound investment. The Treasury Department concurs with commenters that the goals of the Outbound Order and Final Rule will be enhanced if foreign allies and partners develop similar mechanisms. The Treasury Department, along with other relevant U.S. Government departments and agencies, such as the Departments of Commerce and State, will continue to collaborate with foreign partners to advance coordination on risks and policy responses related to outbound investment. In addition, to further U.S. Government efforts to encourage partners and allies to address risks related to outbound investment, the Final Rule includes as an *excepted transaction* certain transactions with or involving a person of a country or territory outside of the United States designated by the Secretary in accordance with certain criteria that relate to that country or territory's own measures to address the national security risk related to outbound investment.

Implementation Delay

A few commenters requested delaying the effective date of the rule to ensure *U.S. persons* and non-*U.S. persons* have enough time to analyze and comply with its requirements. One commenter suggested the implementation of the rule be delayed at least 120 days. Another commenter requested the Treasury Department not set an effective date for the rule until after a decision has been made by the 118th Congress on

a package of PRC-focused legislation given that the pending legislation could supersede portions of the rule.

The Treasury Department has determined to make the effective date of the Final Rule January 2, 2025. This provides time for *U.S. persons* to analyze and respond to the changes made between the Proposed Rule and the Final Rule, while still allowing the Treasury Department to expeditiously address the national security concerns identified in the Outbound Order. The Treasury Department notes that the issuing of the Outbound Order and ANPRM in August 2023 and the Proposed Rule in June 2024 provided notice about the creation and scope of the Final Rule. Moreover, much of the due diligence the Final Rule expects of firms overlaps with existing diligence provisions in other laws and regulations, as well as the routine due diligence performed in these types of transactions. While the Treasury Department welcomes continued engagement with Congress on addressing the national security concerns identified in the Outbound Order, given the lack of certainty surrounding the status of proposed legislation or its likelihood of passage over alternative proposals, the Treasury Department elects not to postpone the effective date of the Final Rule in response to a legislative proposal.

Alignment With Other Authorities

Some commenters discussed how the rule should interact with existing regulatory regimes. One commenter suggested that the rule should anticipate transactions that are subject to both the Outbound Order and CFIUS jurisdiction. They requested the Treasury Department exclude transactions that have been or will be notified to CFIUS from the jurisdiction of the Final Rule.

This commenter misinterprets the role of CFIUS in the context of overlapping authorities. CFIUS was designed to be a tool of last resort, only to be used when other authorities do not apply to a particular transaction. Applying CFIUS jurisdiction to a transaction prior to determining whether a separate authority may cover the transaction would reverse this process. The Treasury Department makes no change to the Final Rule in response to this comment.

A few commenters suggested areas where provisions of the Final Rule could be tied more closely to existing authorities. One commenter suggested tying *covered activities* and similar terms to export classifications or other methods already in use by the U.S.

Government. Another commenter requested the rule be more consistent with existing national security regimes described in the EAR and ITAR, particularly the definitions and compliance standards.

While many of the due diligence expectations set forth in the Final Rule were designed to overlap with existing diligence provisions in other laws and regulations, the Treasury Department recognizes that areas of differentiation may impose some additional burden on market participants. The Treasury Department intends the Final Rule to increase the U.S. Government's visibility into *U.S. person* transactions involving sensitive technologies and products, which necessitates some deviation from existing national security regimes. The proposed provisions are tailored to specific, identified areas to prevent *U.S. persons* from investing in the development of technologies and products that pose a particularly acute national security threat. The Treasury Department makes no change to the Final Rule in response to these comments.

IV. Rulemaking Requirements

This rulemaking pertains to a foreign affairs function of the United States and therefore is not subject to the rulemaking requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553), which exempts a rulemaking from notice and comment requirements "to the extent there is involved . . . a military or foreign affairs function of the United States" (5 U.S.C. 553(a)(1)). As required by the Outbound Order, the Final Rule is being issued to assist in addressing the national emergency declared by the President with respect to the threat posed to U.S. national security by *countries of concern* developing technologies that are critical to the next generation of military, intelligence, surveillance, or cyber-enabled capabilities. As described in the Outbound Order, this threat to the national security and foreign policy of the United States has its source in whole or substantial part outside the United States. The Final Rule will have a direct impact on a foreign affairs function of the United States, which includes the protection of national security against external threats (for example, limiting investment in specific sectors in designated countries of concern).

Although the Final Rule is not subject to the notice and comment requirements of the APA, the Treasury Department is engaged in notice and comment rulemaking for the Final Rule,

consistent with section 1(a) of the Outbound Order. In addition, the Final Rule was designated as significant under Executive Order 12866, as amended, and was reviewed by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). The Treasury Department has undertaken an analysis of the anticipated costs and benefits of the Final Rule. Several commenters to the Proposed Rule discussed the potential burden associated with the Proposed Rule. The Treasury Department, after taking into account these comments, conducted an analysis of the relative costs and benefits of the Final Rule. For purposes of this analysis, the Treasury Department assessed the costs and benefits of the Final Rule relative to a no-action baseline reflecting *U.S. person* investment behavior in the absence of regulations.

In addition, this section includes the required assessments of the reporting and recordkeeping burdens under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), and the potential impact on small entities pursuant to the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 *et seq.*), Unfunded Mandates Reform Act of 1995 (UMRA), and Executive Order 13102, in each case as discussed below.

A. Executive Orders 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess the costs and benefits of available regulatory alternatives for certain types of rulemaking in certain circumstances and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Treasury Department has conducted an assessment of the costs and benefits of the Final Rule, as well as the costs and benefits of available regulatory alternatives. That cost-benefit analysis, along with a summary of comments to the cost-benefit analysis included in the Proposed Rule, is below.

As noted above in section I, the Outbound Order directs the Secretary to establish a program to prohibit *U.S. persons* from engaging in certain transactions and require *U.S. persons* to submit notifications of certain other transactions. These two primary components of the program established by the Outbound Order will serve distinct but interrelated objectives with respect to the relevant technologies and products. The first component requires the Secretary to prohibit certain types of investment by a *U.S. person* in a *covered foreign person* engaged in

certain categories of activities related to technologies and products that pose a particularly acute national security threat. The second component requires notification to the Secretary regarding certain types of investments by a *U.S. person* in a *covered foreign person* engaged in other categories of activities related to technologies and products that may contribute to the threat to national security. The focus of both components is on investments that can enhance a *country of concern's* military, intelligence, surveillance, or cyber-enabled capabilities through the advancement of technologies and products in particularly sensitive areas. In an Annex to the Outbound Order, the President identified the PRC, including Hong Kong and Macau, as a *country of concern*.

As described above in section II, this Final Rule is consistent with the President's mandate in the Outbound Order and prescribes procedures and obligations governing the (1) prohibition of certain types of investment by *U.S. persons* into certain entities located in or organized under the laws of a *country of concern*, certain other entities owned or controlled by *persons of a country of concern* or acting for or on behalf of the government of a *country of concern*, and certain entities with an interest in and significant financial connection to a *person of a country of concern* with capabilities or activities related to defined technologies and products; and (2) mandatory notification to the Secretary by *U.S. persons* for certain types of investment into certain entities located in or organized under the laws of a *country of concern*, certain other entities owned or controlled by *persons of a country of concern* or acting for or on behalf of the government of a *country of concern*, and certain entities with an interest in and significant financial connection to a *person of a country of concern* with capabilities or activities related to defined technologies and products. The implementation of the Outbound Order through this Final Rule will advance the President's objective of regulating certain investments from the United States into a *country of concern*.

The Final Rule will cover a defined set of transactions such as certain acquisitions of equity interests (e.g., mergers and acquisitions, private equity, and venture capital) and *contingent equity interests*, certain debt financing transactions, greenfield and brownfield investments, joint ventures, and certain LP investments by *U.S. persons*. Given the focus on transactions that could aid in the development of technological advances that pose a risk to U.S. national security, the Treasury

Department will except from the Final Rule certain transactions with a lower likelihood of having that effect. The exceptions extend to certain investments into publicly traded securities or into securities issued by an investment company, such as an index fund, mutual fund, or exchange traded fund.

1. Comments on Initial Executive Order 12866, 13563, and 14094 Analysis

Several commenters provided comments on the initial cost analysis, while another commenter provided additional data related to outbound and inbound investments involving the PRC.

Multiple commenters argued that the initial cost analysis underestimated the costs associated with the rule. In making this argument, a few commenters noted that the initial cost analysis underestimated the scope of affected transactions. One commenter noted that the Treasury Department's cost estimate relied on analysis of equity investments made by U.S.-based investors in the semiconductor, AI, and quantum science sectors of the PRC, but that the rule could apply to a range of investment and corporate activities beyond equity investments. It also noted that the rule could affect investment in countries other than the PRC because of the scope of the definition of *covered foreign person* and could affect non-U.S. based investors because of the scope of the definition of *controlled foreign entity*. Another commenter noted that the Treasury Department's estimate of direct costs for the rule is too low, and that the potential impact would be at least 10 times greater than the Treasury Department's estimate.

Regarding the number of transactions used for the initial cost analysis, as the Treasury Department noted in the Proposed Rule, precise data that matches the scope of potential *covered transactions* is not available. However, the Treasury Department disagrees that the scope of potential *covered transactions* is as broad as suggested by the commenters. The terms *covered transaction* and *covered foreign person*, along with other defined terms they incorporate, are scoped to apply to a relatively narrow subset of firms and activities involving either *U.S. persons* or *persons in a country of concern*. In the initial cost analysis, the Treasury Department doubled the average number of transactions derived from the existing data, in recognition of the lack of precision in the data used to estimate the number of potential *covered transactions*, and to account for the likely underrepresentation of potentially relevant transactions. While the

Treasury Department declines to adopt an estimate 10 times greater than that set out in the Proposed Rule, as was suggested by one commenter, the Treasury Department has increased the estimated number of annual transactions for the cost analysis in the Final Rule from 120 entities and 212 transactions to 180 entities and 318 transactions. While commenters did not provide any more specific alternative data, the Treasury Department is making this adjustment in response to comments about underrepresentation and uncertainty for the number of potential *covered transactions*. The Treasury Department notes that this increase in the number of transactions increases estimated costs for the private sector but does not increase estimated costs for the U.S. Government. The U.S. Government costs associated with the Final Rule are not calculated on a per transaction basis.

One commenter argued that the estimated costs were too low because they did not take into account the costs of due diligence in the business sector more broadly. The commenter stated that in each case the party undertaking the transaction will be required to determine whether a *U.S. person* is involved, whether the transaction is a *covered transaction*, and whether the transaction counterparty is a *covered foreign person*. The commenter also noted that even for transactions that are not covered, parties will feel compelled to maintain records of the diligence they perform on such transactions, so they can demonstrate that they did not have *knowledge*—including “reason to know”—that the transaction was a *covered transaction* in the event the Treasury Department decides to investigate the transaction after the fact. The commenter suggested that Treasury Department account for these costs as well.

With regard to the need to engage in due diligence and maintain records for transactions that are not covered to demonstrate the lack of *knowledge* about a potentially *covered transaction*, the Treasury Department declines to add additional costs. As noted in the Proposed Rule, most investment transactions, regardless of whether the investment would be potentially subject to the Final Rule, involve some level of review, diligence, assessment, and recordkeeping by the investor. For some transactions and investors, the level of information collection, retention, and diligence necessary to comply with the Final Rule may not give rise to any costs beyond what would be incurred in the absence of the Final Rule. The Treasury Department has added additional

discussion to the final cost analysis to note this. With regards to significantly higher costs noted by one commenter, the Treasury Department notes that the total annual direct costs associated with complying with the Proposed Rule were expected to have a range of between \$2,811,120 and \$6,148,000, and the total annual time burden was estimated at approximately 21,200 person hours. The commenter did not provide further evidence or data supporting its alternative estimate. As noted above, the Final Rule cost analysis increases the number of estimated transactions, but without more specific alternative data provided, it does not adjust the time or labor costs identified in the Proposed Rule cost.

Another commenter argued that the initial analysis understated the relevant costs because it omitted certain indirect costs. In particular, the commenter stated that while the initial analysis examined indirect costs such as foregone returns on investment incurred for *prohibited transactions*, it should also consider two other indirect costs related to *covered transactions*. The first indirect cost is for both “uncovered” and *notifiable transactions* that the commenter alleges some firms will abandon due to the “actual or perceived costs” associated with the rule. The second indirect cost is the loss associated with forgone returns of all investments that did not occur—*prohibited transactions* and transactions that were abandoned because of the perceived or actual cost of the rule, including forgone revenues, market access, market participation, and research and development expenditures. The commenter also noted that as the actual or perceived costs of compliance increase, it is more likely that the costs of the rule would exceed its benefits.

In response to this comment, the Treasury Department declines to add additional indirect costs associated with other *covered transactions* as well as transactions that are not covered. As noted in the Proposed Rule, other indirect costs are particularly difficult to assess due to individual decision-making, opportunities available, and market conditions, making any estimate highly speculative. The Treasury Department has updated the cost analysis to note that in a very small number of cases, companies might decide to forego a non-*prohibited transaction* in favor of a different investment that would be further away from the parameters of the Final Rule. The Treasury Department assesses that the impact of these costs is nominal, because if the difference in investment return between the forgone investment

and alternate investment the company chose was more significant, then the company would have determined the diligence cost was acceptable, given the higher economic return. In addition, the Treasury Department notes it is very challenging to determine the particular sector, country, or investment structure that the U.S. investor would choose as the alternate and then quantify the impact of that determination.

Finally, a commenter noted that the Treasury Department should review how the rule will affect U.S. investments in sectors implicated by the definitions of *notifiable transaction* and *prohibited transaction* and whether they will be supplanted by investments from other countries. As noted above and discussed in the rule, several impacts of the Final Rule are particularly difficult to quantify, including the extent to which the Treasury Department can determine the percentage of investors from specific countries that will replace U.S. investors for *prohibited transactions*. The Treasury Department has added a brief discussion of this issue to the final cost analysis.

2. Final Executive Order 12866, 13563, and 14094 Analysis

(a) Costs

The primary direct costs to the public associated with the Final Rule relate to (1) understanding the Final Rule; (2) conducting the transaction-specific diligence that would be needed for a U.S. person to determine whether a particular transaction would be either a *notifiable transaction* or a *prohibited transaction* under the Final Rule; and (3) if applicable, preparing and submitting a mandatory notification of certain transactions or other information to the Treasury Department pursuant to the Final Rule. The Final Rule may also involve certain additional indirect costs associated with *prohibited transactions*. Investors who would have otherwise engaged in a *prohibited transaction* absent the Final Rule may pursue alternative investment opportunities since they are precluded from undertaking a *prohibited transaction*.

The Final Rule will apply to all U.S. persons who undertake, directly or indirectly, a *covered transaction*. Because of the tailored scoping of the Final Rule, the Treasury Department estimates that it will apply to a relatively modest volume of potential *covered transactions*. While precise data that matches the scope of *covered transactions* including the relevant technology and products in the Final Rule is not available—and is one of the reasons for the notification requirement,

which will increase the U.S. Government’s visibility into the relevant transactions—available data appears to support this estimate of a modest volume. For example, to estimate the number of entities that will be potentially affected by the Final Rule and would incur associated direct compliance costs, the Treasury Department considered data available through PitchBook from approximately 2021 to 2023.¹ This data indicates that over this three-year period, 180 unique U.S.-based investors made around 318 equity and add-on investment transactions in the semiconductor, AI, and quantum science sectors of the PRC (as defined by PitchBook). This data suggests an annual average of 60 different investors engaging in an annual average of 106 potentially *covered transactions*. Since details of U.S. private investment overseas cannot be determined with precision through the available data, and there are limitations in any dataset based on the parameters set by the provider, the Treasury Department has determined this figure to be a lower bound.

The Treasury Department also acknowledges that some U.S. person investors may incur costs even where the Final Rule does not appear to apply directly to their transaction. To clarify, the figure used to estimate the volume of potentially *covered transactions* may not capture all instances of parties who may incur costs as a result of the Final Rule. For example, a U.S. person may not always know in advance of the due diligence process whether the U.S. person will want or need to collect information related to the Final Rule and then proceed to spend resources on diligence, only to confirm that the relevant transaction is not a *covered transaction*. However, as noted in the Proposed Rule, most investment transactions, regardless of whether the investment would be potentially subject to the Final Rule, involve some level of review, diligence, assessment, and recordkeeping by the investor. For some transactions and investors, the level of information collection, retention, and diligence necessary to comply with the Final Rule may not give rise to any costs beyond what would be incurred in the absence of the Final Rule.

For purposes of the Final Rule cost analysis, the Treasury Department tripled the averages from the available data to account for the likely underrepresentation of potentially relevant transactions. Thus, the Treasury Department’s analysis is based

¹ PitchBook, <https://pitchbook.com> (last visited May 24, 2024).

on the estimate of approximately 180 entities and 318 transactions annually (based on an assumption of an annual average of 1.77 transactions per entity) that may be affected by the Final Rule. For the remainder of this analysis, however, the Treasury Department relied on the estimates as described above.

To derive an estimate for the costs related to the Final Rule, the Treasury Department first estimated the associated labor costs related to interpreting and applying the Final Rule. The Treasury Department expects that individuals and entities reviewing the Final Rule and engaging in potentially relevant transactions will engage on their own and through their own employees as well as hire lawyers or advisors from outside firms.

For a low-end estimate, the Treasury Department relied on a figure from the Bureau of Labor Statistics (BLS), which reports the mean hourly wage for Standard Occupational Classification System Code (SOC Code) 231011—Lawyers to be \$84.84 per hour and SOC Code 111021—General and Operations Managers to be \$62.18 per hour.² In each instance the Treasury Department tripled the BLS mean hourly wage figure. This adjustment is intended to not only account for employee benefits and overhead, but also to reflect the presumption that hourly labor costs of the investors and their advisors likely to be affected by the Final Rule will often be higher than the hourly mean wage in these occupation categories across the United States. Accordingly, the Treasury Department estimates that the impacted entities will each incur costs of \$187 per hour for managers and \$255 for lawyers. As the Treasury Department is unable to determine which particular tasks will be performed by managers or lawyers, the Final Rule cost analysis uses the average wage of the two positions for both the low-end and high-end estimate, which the Treasury Department assesses is a reasonable method for estimating the hourly cost. The average of these figures is \$221 per hour and, again, this is a low-end estimate.

For a high-end estimate, the Treasury Department acknowledges that the hourly rate billed for a lawyer performing the relevant type of work at a private firm may be significantly higher than the average hourly wage of a lawyer from the BLS figure. The global data and business intelligence platform Statista reports that the average hourly attorney billing rate in Washington, DC

in 2023 was \$392.³ The average of the hourly cost of a manager at \$187 per hour and the Statista figure of the hourly rate of a lawyer at \$392 per hour is \$290.

Costs Associated With Understanding the Proposed Rule

Based on the above assumptions and estimates of affected entities, number of transactions, and labor costs, the Treasury Department has estimated the annual time and cost that would be spent by affected entities in understanding the Final Rule. While recognizing that the extent of this diligence will necessarily vary from transaction to transaction, the Treasury Department arrived at the below estimates for purposes of this regulatory analysis.

The range of estimated aggregate annual costs for understanding the Final Rule begins at \$702,780 on the low end and goes up to \$922,200 on the high end. This is based on the estimate of an average time burden to be 10 total person hours per transaction for understanding the Final Rule. As such, 10 total person hours per transaction multiplied by 318 annual transactions and the low-end hourly labor cost range and high-end hourly labor cost range described above, respectively, result in the total cost range for understanding the Final Rule.

Costs Associated With Diligence and Maintaining Records

Based on the above assumptions and estimates of affected entities, number of transactions and labor costs, the Treasury Department has estimated the annual time and cost that would be spent by affected entities on conducting additional transactional diligence with respect to this Final Rule. These economic estimates should in no way be construed as relevant to the reasonableness of the inquiry a party would pursue in light of the particular facts and circumstances of a transaction and the requirements of the Proposed Rule. While recognizing that the extent of this diligence will necessarily vary from transaction to transaction, the Treasury Department arrived at the below estimates for purposes of this regulatory analysis.

The Treasury Department recognizes that most investment transactions, regardless of whether the investment is potentially subject to this Final Rule, involve some level of review, diligence, assessment, and recordkeeping by the

investor. And, for some transactions and investors, the level of information collection, retention, and diligence necessary to comply with the Final Rule may not give rise to any costs beyond what would be incurred in the absence of the Final Rule. This conclusion is reached by focusing on the nature of the information required for a notification, which consists of data typically gathered or available in the process of making an investment. This includes, for example, the proposed information requirements regarding transaction party identifying information as well as the commercial rationale, transaction structure, financial details, and *completion date* of the transaction itself.

The Treasury Department assesses that it is reasonable in some cases to assume that customary transactional due diligence would involve the collection and review of this required information, meaning that only incremental costs would be incurred for the review of the information from the perspective of ensuring compliance with the Final Rule. While the notification requirement also includes (1) information regarding *covered activities* undertaken by the *covered foreign person* that make the transaction a *notifiable transaction*, as well as a brief description of the known end uses and end users of the *covered foreign person's* technology, products, or services; (2) a statement of the attributes that cause the entity to be a *covered foreign person*; and (3) in certain cases, the identification of the technology nodes at which any applicable product is produced, the due diligence underlying many *covered transactions* will include gathering and reviewing this information even if not specifically to comply with the Final Rule. The Final Rule further states that a *U.S. person* that has failed to conduct a “reasonable and diligent inquiry” as of the time of a given transaction may be assessed to have had awareness or “reason to know” of a given fact or circumstance, including facts or circumstances that would cause the transaction to be a *covered transaction*. Compliance with this provision and the requirements of the Final Rule may in some cases require enhanced diligence. Recognizing that in some instances, compliance with the Final Rule may not require the collection and retention of additional transaction-related information, this analysis considers reasonable estimates of the additional due diligence and recordkeeping costs that could be associated with the Final Rule as described below.

The range of estimated annual incremental cost for conducting due

³ Statista (Feb. 26, 2024), <https://www.statista.com/statistics/941146/legal-services-hourly-rates-metropolitan-region-united-states/>.

² Figures based on May 2023 data.

diligence and recordkeeping associated with the Final Rule runs from \$0 on the low end to \$3,688,800 on the high end. These are two ends of the range, and it is anticipated that the costs for most transactions will fall between these figures. The Treasury Department estimates that the average time burden will likely not exceed 40 total person hours per transaction for conducting additional due diligence and recordkeeping with respect to the Final Rule.

For the low end of this range, it is reasonable to anticipate that some investors, having spent resources learning about the Final Rule, as discussed above, will be able to quickly collect and assess the information needed to determine whether a potential transaction would be a *prohibited transaction*. As such, the low-end estimate is a zero-dollar incremental cost for additional due diligence and recordkeeping. Not all transactions will be this simple, and it is reasonable to anticipate more costs at the higher end of the range. As such, 40 total person hours per transaction multiplied by 318 annual transactions and the high-end hourly labor cost estimate described above results in the high-end estimate for additional due diligence and recordkeeping related to the Final Rule. The Treasury Department estimates 40 person hours per transaction, based on approximately a total of eight person hours across all involved general and operations managers and lawyers per business day for one week. However, the cost of a *U.S. person* conducting diligence and the difficulty of that exercise will vary depending on a transaction's complexity, the availability of relevant information, and the incremental person hours may be higher for certain transactions, for example those that involve indirect transactions.

Costs Associated With Providing Information

The Final Rule requires the submission of information to the Treasury Department for *notifiable transactions* and provides for certain other circumstances that require information submission. The Treasury Department requires *U.S. persons* to provide notification of certain transactions under the Final Rule. The Final Rule requires that a *person* seeking a national interest exemption from the Final Rule's notification requirement or prohibition must submit certain information to the Treasury Department. The Final Rule also requires a *U.S. person* to make a post-closing submission regarding a

transaction that it believed at closing was not a *covered transaction* when the *U.S. person* later discovers information which, had it been known at closing, would have caused the transaction to be a *covered transaction*. Also, the Final Rule requires a *U.S. person* to inform the Treasury Department of any material omission or inaccuracy in any previous representation, statement, or certification. Lastly, the Treasury Department anticipates time and cost associated with responding to inquiries by the Treasury Department.

The Treasury Department expects that of the universe of potentially *covered transactions* for which *U.S. persons* perform due diligence each year, certain transactions will turn out not to be covered, others will turn out to be *notifiable*, and still others will turn out to be *prohibited*. For purposes of this analysis, however, the Treasury Department has assumed that *U.S. persons* will perform due diligence with respect to the estimated 318 potentially *covered transactions* each year, and that all 318 will turn out to be *notifiable transactions*. The Treasury Department took this approach in the interest of estimating a theoretical maximum upper bound, recognizing that the number of actual *notifiable transactions* is likely to be less than 100 percent of potentially *covered transactions*. A *notifiable transaction* would likely cost more in terms of time and resources than a *prohibited transaction*, because, in addition to the due diligence cost, a *notifiable transaction* would entail resources to prepare and submit a notification.

The estimated annual cost range for time spent submitting information would be \$3,513,900 to \$4,611,000. This estimate assumes 50 person hours per transaction for preparing and submitting a notification through an online portal, combined with the number of transactions per year (318) and the hourly labor cost range described above—\$221 to \$290. As discussed above, this number reflects the high-end estimate, since this analysis assumes that every potentially relevant transaction would result in a notification.

For purposes of this analysis, the Treasury Department estimated only the total annual costs of preparing and submitting a notification under § 850.404 of the Final Rule. The Treasury Department anticipates that the time and cost behind preparing and submitting a post-transaction notice, notice of any material omission or inaccuracy in any previous representation, statement, or certification, or responding to agency

inquiries may be comparable to the costs of preparing and submitting a notification. Likewise, where a *U.S. person* elects to provide information in seeking a national interest exemption, the Treasury Department anticipates that the associated costs will be comparable to or will slightly exceed the costs of preparing and submitting a notification.

Estimated Total Direct Costs

Based on the direct cost estimates above, the total annual direct costs associated with complying with the Final Rule can be expected to have a range of between \$4,216,680 and \$9,222,000 and the total annual time burden will be approximately 31,800 person hours.

Additional Indirect Costs Associated With Prohibited Transactions and Non-Covered Transactions

With respect to *prohibited transactions*, the Treasury Department has no basis to conclude that the Final Rule will have additional direct economic costs to U.S. investors beyond those described above. There may, however, be additional indirect costs associated with *prohibited transactions*. Investors who would have otherwise engaged in a *prohibited transaction* absent the Final Rule may pursue alternative investment opportunities since they will be precluded from undertaking a *prohibited transaction*. These indirect costs amount to the difference, if any, between the return on investment that would have been generated by a *prohibited transaction* and the return on investment that will result from an alternative transaction. The Treasury Department notes that in a very small number of cases, companies might decide to forego a non-prohibited transaction in favor of a different investment that is not subject to the Final Rule or a similar regulatory regime. The Treasury Department assesses that the impact of these costs are nominal, because if the difference in investment return between the forgone investment and alternate investment the company chose was more significant, then the company would have determined the diligence cost was acceptable given the higher economic return. In addition, Treasury notes it is very challenging to determine the particular sector, country, or investment structure that the U.S. investor will choose as the alternate and then quantify the impact of that determination. The Treasury Department also notes that investors from specific countries, including those that are not U.S. allies, may replace U.S.

investors for *prohibited transactions*. Similarly, Treasury notes that it is particularly difficult to quantify these and other impacts of the Final Rule.

Any attempt to quantify this cost would be speculative and difficult to assess in any specificity due to individual decision-making, opportunities available, and market conditions. In addition, while the Final Rule may have an economic impact on investment targets that are *covered foreign persons* because certain transactions will be prohibited, the Final Rule is not designed to nor does it prohibit all *U.S. person* investments into such persons, due to the scope of transactions covered as well as the exceptions provided for in the Final Rule.

Costs to the U.S. Government

Administering the Final Rule will also entail costs to the U.S. Government. Such costs will include information technology (IT) development and ongoing annual maintenance, as well as processing electronic notifications. The Treasury Department estimates that initial IT development costs will be between \$4 million and \$8 million with an additional \$2 million to \$3 million required to maintain the systems and the underlying technology being leveraged to support the capabilities. The Treasury Department and other relevant agencies, including the Department of Commerce, may incur additional costs besides those estimated above. These include other responsibilities related to the implementation of the Final Rule such as analyzing notifications submitted as well as complying with the reporting requirements under the Outbound Order. Furthermore, costs may be associated with efforts to promote compliance with the notification requirement and prohibition, potentially including education on the requirements, provision of information and FAQs, and conducting stakeholder outreach. The Treasury Department does not currently have specific estimates for these costs but estimates that there will be personnel costs of less than \$2 million associated with the Final Rule in Fiscal Year 2024 with additional costs for ongoing outreach and enforcement thereafter.

The Treasury Department and other U.S. Government agencies may also incur costs in enforcing compliance with the Final Rule. The Treasury Department does not currently have estimates for these costs, and they are not included in the estimates above.

The Treasury Department plans to monitor compliance with the Final Rule

by leveraging a variety of data sources, both internal and external. If the external data sources include third-party commercial data, the Treasury Department assesses that the cost associated with accessing these databases will be modest and incremental, given that the Treasury Department regularly maintains access to such databases in the course of other work but may need to request additional licenses for employees. After identifying an instance of apparent non-compliance, the Treasury Department may initiate outreach to the involved entity, work with law enforcement to investigate the apparent non-compliance, or initiate an enforcement action. The Treasury Department's enforcement of the Final Rule will also involve coordination with law enforcement agencies. These law enforcement agencies may also incur costs (time and resources) while conducting investigations into potential non-compliance.

(b) Benefits

The President found in the Outbound Order that the advancement by *countries of concern* in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the United States, which has its source in whole or substantial part outside the United States, and that certain U.S. investments risk exacerbating this threat. The potential military, intelligence, surveillance, or cyber-enabled applications of these technologies and products pose risks to U.S. national security particularly when developed by a *country of concern* in which the government seeks to (1) direct entities to obtain technologies to achieve national security objectives; and (2) compel entities to share with or transfer these technologies to the government's military, intelligence, surveillance, or security apparatuses. As part of their strategy of advancing the development of these sensitive technologies and products, *countries of concern* are exploiting or could exploit certain U.S. outbound investments, including certain intangible benefits that often accompany U.S. investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. Such investments, therefore, risk exacerbating this threat to U.S. national security. Although the United States has undertaken efforts to enhance existing

policy tools and develop new policy initiatives aimed at maintaining U.S. leadership in technologies critical to national security, there remain instances where the risks presented by U.S. investments enabling *countries of concern* to develop critical military, intelligence, surveillance, or cyber-enabled capabilities are not sufficiently addressed by existing tools.

The Final Rule is designed to complement existing tools and effectively address the threat to the national security of the United States described in the Outbound Order. The benefit of protecting national security is difficult to quantify. Furthermore, the notification component of the Final Rule is intended to provide key information that the Treasury Department can use to better inform the development and implementation of the Final Rule. These notifications will increase the U.S. Government's visibility into transactions by *U.S. persons* or their *controlled foreign entities* and involving technologies and products relevant to the threat to the national security of the United States due to the policies and actions of *countries of concern*. These notifications will be helpful in highlighting trends with respect to related capital flows and will inform future policy development. The Treasury Department expects that the national security benefits, while qualitative, will outweigh the compliance costs of the Final Rule.

(c) Alternatives

The Outbound Order requires the Secretary to issue implementing regulations subject to public notice and comment. As a result, the Treasury Department did not have the discretion to refrain from promulgating the Final Rule or to promulgate it without notice and comment. However, the Treasury Department considered different approaches to the Final Rule that would be available under the Outbound Order. Specifically, the Treasury Department considered the following potential alternatives to the Final Rule:

- *Scope of covered transaction and excepted transaction.* The Treasury Department could have proposed a broader definition of *covered transaction* or fewer exceptions, and the Treasury Department considered certain alternatives to the scope of *covered transaction* and *excepted transaction* in developing the Final Rule. This discussion does not cover each alternative considered for the scope of *covered transaction* but provides a summary of a few alternatives the Treasury Department considered. The

Treasury Department considered and selected regulatory approaches that maximize net benefits (including effectively addressing the national security threat identified in the Outbound Order) while balancing potential compliance and implementation costs. For example, an alternative that the Treasury Department considered in relation to *contingent equity interests* in particular was to limit the scope of *covered transaction* to just the acquisition of a *contingent equity interest* and not separately cover the conversion of the *contingent equity interest*. This would have reduced some of the compliance and resource burden on a *U.S. person*, who would have, in the context of a *notifiable transaction*, been required to submit a notification only at the time of acquisition rather than a notification at the time of acquisition and another notification at the time of conversion of contingent equity. However, this alternative would have reduced the ability of the U.S. Government to observe the frequency and instances in which the relevant contingent interests convert. Another example is with respect to the exception for LP investments. As discussed above, in the Proposed Rule the Treasury Department offered and sought comment on two alternatives for this exception. Under proposed Alternate 1, a *U.S. person's* investment made as an LP in a pooled investment fund would have constituted an *excepted transaction* if (1) the LP's rights were consistent with a passive investment and (2) the LP's committed capital was not more than 50 percent of the total AUM of the pooled investment fund. If the *U.S. person* LP's committed capital were to constitute more than 50 percent of the total AUM of the pooled investment fund, its investment would have qualified as an *excepted transaction* only if the *U.S. person* secured a binding agreement that the pooled investment fund would not use its capital for a *prohibited transaction*. This approach would have addressed situations where the *U.S. person's* LP investment falls below the threshold but contains one of several indicia of control or influence over the pooled investment fund or the ultimate *covered foreign person* investment target. Compared to Alternate 2, Alternate 1 would have scoped in fewer LP investments as *covered transactions* but could potentially have been more challenging for a *U.S. person* to comply with, as it required a multi-factor analysis for assessing whether a *U.S. person's* LP investment is an *excepted transaction*. Under Alternate 2, a *U.S.*

person LP's committed capital in a pooled investment fund that then invests in a *covered foreign person* would have been an *excepted transaction* only if the committed capital was not more than \$1,000,000. Although this alternative would have likely scoped in a greater number of LP investments as *covered transactions* compared to Alternate 1 (and potentially increase the compliance costs of this program), the bright-line approach may have been easier for *U.S. persons* to comply with than Alternate 1. As discussed above at the preamble to Subpart E, the Treasury Department has adopted a hybrid approach in the Final Rule—defining *excepted transaction* as any LP investment of \$2,000,000 or less, or any LP investment accompanied by a binding contractual assurance that the LP's capital invested in the pooled investment fund would not be made to effect an indirect *prohibited transaction* or *notifiable transaction*, as applicable.

- *Covered national security technologies using broad definition of sectors rather than specific activities and technologies.* In the Proposed Rule, the Treasury Department proposed to define *notifiable transaction* and *prohibited transaction* in §§ 850.217 and 850.224, respectively, by reference to certain technologies and activities, and in some instances, end uses. Alternatively, the Treasury Department could have opted for a broad sectoral categorization, such as, for example, all technologies and products in the artificial intelligence sector, regardless of the end use of such artificial intelligence related technologies or products. If the Treasury Department had proposed that approach, the Treasury Department estimates that the economic impact for *U.S. persons* subject to the rule, and for the overall U.S. economy, would be significantly greater than under the Final Rule. Instead, the Treasury Department, along with other relevant agencies, carefully tailored the *covered activities* and technical descriptions under the definitions of *notifiable transaction* and *prohibited transaction*. In the case of *AI systems*, the Final Rule addresses *covered activities* related to certain *AI systems* that would have applications that pose or have the potential to pose national security risks without broadly capturing *AI systems* intended only for commercial applications or other civilian end uses that do not have potential national security consequences, thereby limiting the additional compliance and implementation burden on *U.S. persons*.

The Treasury Department intends the Final Rule to provide a *U.S. person* with clarity and information regarding its obligations with respect to a *covered transaction*, while effectively addressing the national emergency identified in the Outbound Order in a targeted manner. The Treasury Department expects that the national security benefits, while qualitative, will outweigh the compliance costs of the Final Rule.

B. Paperwork Reduction Act

The collections of information contained in this Final Rule have been submitted to OMB for review in accordance with the PRA under control number 1505–0282.

The Final Rule will require a *U.S. person* to submit a notification with respect to (1) any *notifiable transaction*; (2) any transaction by a *controlled foreign entity* that would be a *notifiable transaction* if engaged in by a *U.S. person*; and (3) any transaction for which a *U.S. person* acquires actual knowledge after the completion date of the transaction that the transaction would have been a *prohibited transaction* or a *notifiable transaction* if knowledge had been possessed by the relevant *U.S. person* at the time of the transaction. Such notification must include relevant details on the *U.S. person* involved in the transaction as well as information on the transaction and the *covered foreign person* involved. The Final Rule will require any *U.S. person* that has filed a notification to respond to any questions or document requests from the Treasury Department related to the transaction or compliance with the Final Rule; any information or documents provided to the Treasury Department in response to such request will be deemed part of the notification under the Final Rule.

The Final Rule will also require any *U.S. person* that files a notification to maintain a copy of the notification filed and supporting documentation for a period of 10 years from the date of the filing. Further, the Final Rule will require any person who has made any representation, statement, or certification subject to the Final Rule to notify the Treasury Department in writing of any material omission or inaccuracy in such representation, statement, or certification. Finally, the Final Rule will also require any *U.S. person* seeking a national interest exemption to submit information to the Treasury Department regarding the scope of the transaction including, as applicable, the information required for a notification of a *notifiable transaction*.

The collections of information described will be used by the Treasury

Department and the Department of Commerce, and, as appropriate, other relevant agencies, in connection with the analysis of notifiable transactions pursuant to the Outbound Order. The information provided in the notifications will increase the U.S. Government's visibility into the volume and nature of *U.S. person* transactions involving the defined technologies and products that may contribute to the threat to the national security of the United States. The information in the notifications will be helpful in highlighting trends with respect to related capital flows. It may also inform future policy development and decisions, including any modifications to the scope of *notifiable transactions* and *prohibited transactions*.

Additionally, the information will assist the Secretary in complying with the report requirements in section 4 of the Outbound Order and in determining whether to grant a national interest exemption to a particular *covered transaction*. The Final Rule will prohibit the Treasury Department from making public any information or documentary materials submitted to or filed with the Treasury Department under the Final Rule unless required by law or otherwise provided in the Final Rule.

The Treasury Department used the methodology described in the previous section to estimate the total annual reporting and recordkeeping burden of the information collections in this Final Rule. The Treasury Department estimates that the annual hourly burden will be up to 28,620 hours. This annual total is based on the Treasury Department's assumption that: (1) 180 entities per year will respond to the information collections in this Final Rule and each entity will submit an average of 1.77 notifications annually, meaning these respondents will file a total 318 responses to the information collections annually; and (2) each respondent will spend an estimated 50 to 90 person hours per response. The Treasury Department estimates that the annual cost burden associated with the information collections and recordkeeping in the Final Rule will range between \$3,513,900 and \$8,299,800.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

C. Regulatory Flexibility Act

The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that

the final rule would not have a significant economic impact on a substantial number of small entities. The Treasury Department certified that the Proposed Rule would not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA. The Treasury Department did not receive any comments from the public or the Chief Counsel for the Office of Advocacy of the Small Business Administration (SBA) on this certification.

The Treasury Department is hereby certifying that the Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

The Final Rule may impact any *U.S. person*, including a small business that engages in a *covered transaction* with a *covered foreign person*. The Treasury Department does not anticipate that the Final Rule will affect "small organizations" or "small governmental jurisdiction[s]," as defined in the RFA.

The Treasury Department expects the Final Rule to have a negligible baseline impact on small businesses because the Final Rule's obligations on *U.S. persons* target investments generally associated with larger institutions that more often are involved in cross-border investments related to the sectors under the Final Rule. These larger institutions are more likely to enter into transactions that will trigger the definition of *covered transaction*. The Final Rule will except specific types of transactions that may be more attractive or accessible to small business investors. And, as discussed below, the Treasury Department has assessed that small businesses will be likely to enter into transactions that constitute *excepted transactions*.

As an example, the SBA's Table of Size Standards with respect to North American Industry Classification System (NAICS) U.S. Industry Sector 52 "Finance and Insurance" defines a small business in this sector by dollar value of assets or revenue rather than by number of employees. As discussed below, the Treasury Department believes that the relevant SBA thresholds are too low to capture the type of U.S. investor likely to actively invest in an entity that engages in the identified activities related to technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*. For example, SBA categories such as "open

end investment funds," and "other financial vehicles" are not considered small businesses if their average annual receipts exceed \$40 million. As a reference point, IBISWorld reports that for NAICS Industry Code 52591 "Open-End Investment Funds," for years 2018 to 2023, there were 825 businesses in this category and a total 2023 revenue across those businesses of \$191.1 billion.

Extrapolating from this data, the average 2023 revenue per firm in this category would have been \$231.5 million. In fact, the total number of potential investors subject to the regulation is likely limited to a small set of relatively large and sophisticated investors. As discussed above, the Treasury Department considered PitchBook Data from approximately 2021 through 2023. Notably, the most common type of U.S. based investors in this survey were identified by PitchBook Data as a venture capital business, corporation, private equity or buyout firm, or comparable investor types.

Given the applications of technologies and products in these sectors, the Treasury Department believes investments into these sectors involving *a person of a country of concern* is not typical for a small business, as these investor types are treated in the SBA's Table of Size Standards. Importantly, the Final Rule will also except certain types of transactions, including certain investments into publicly traded securities or into securities issued by an investment company, such as an index fund, mutual fund, or exchange traded fund, where a small business is more likely to consider investing. Given the narrow scoping of what constitutes a *covered transaction* under the Final Rule, the Treasury Department expects that few small businesses, as that term is defined by the SBA, will be impacted by the Final Rule.

In the unlikely event that a small entity is subject to the requirements of the Final Rule, such entity will be expected to incur the costs described in the cost benefit analysis above. For submission of notifications, the Treasury Department has endeavored to develop information gathering procedures that minimize the burden on *U.S. persons*, both large and small. *U.S. persons* who file a notification will use a fillable form that will be available online and is intended to facilitate submission through an electronic format. This fillable form will benefit anyone who submits a notification, regardless of their size, but may be especially helpful for small businesses

who will be able to submit directly to the Treasury Department.

D. Unfunded Mandates Reform Act

Section 202 of UMRA requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The Final Rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

E. Executive Order 13132: Federalism

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the order. The 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 Executive Order 13132.

F. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 31 CFR Part 850

Administrative practice and procedure, Artificial intelligence, Business and industry, Confidential business information, Electronic filing, Executive orders, Foreign persons, Hong Kong, Holding companies, Investigations, Investments, Investment companies, Microelectronics, National defense, National security, Macau, Penalties, People's Republic of China, Quantum information technologies, Reporting and recordkeeping requirements, Science and technology, Securities, Semiconductors, U.S. investments abroad.

■ For the reasons set forth in the preamble, the Treasury Department adds part 850 of title 31 of the Code of Federal Regulations to read as follows:

PART 850—PROVISIONS PERTAINING TO U.S. INVESTMENTS IN CERTAIN NATIONAL SECURITY TECHNOLOGIES AND PRODUCTS IN COUNTRIES OF CONCERN

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Subpart B—Definitions

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- 850.602 Failure to fulfill requirements.
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Subpart G—Penalties and Disclosures

- 850.701 Penalties.
- 850.702 Administrative collection; referral to United States Department of Justice.
- 850.703 Divestment.
- 850.704 Voluntary self-disclosure.

Subpart H—Provision and Handling of Information

- 850.801 Confidentiality.
- 850.802 Language of information.

Subpart I—Other Provisions

- 850.901 Delegation of authorities of the Secretary of the Treasury.
- 850.902 Amendment, modification, or revocation.
- 850.903 Severability.
- 850.904 Reports to be furnished on demand.

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 14105, 88 FR 54867, 31 U.S.C. 321.

Subpart A—General

§ 850.101 Scope.

(a) This part implements Executive Order 14105 of August 9, 2023, “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern” (the Order), directing the Secretary of the Treasury (the Secretary), in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant executive departments and agencies, to issue, subject to public notice and comment, regulations that require U.S. persons to provide notification of information relative to certain transactions involving covered foreign persons and that prohibit U.S. persons from engaging in certain other transactions involving covered foreign persons.

(b) The regulations identify certain types of transactions that are *covered transactions*—that is, transactions that are either notifiable or prohibited. Additionally, the regulations identify other instances where a U.S. person has obligations with respect to certain transactions. The regulations prescribe exceptions to the definition of *covered transaction*. A transaction that meets an exception is not a *covered transaction* and is referred to as an *excepted transaction*. Finally, the regulations prescribe a process for the Secretary to exempt certain *covered transactions* from the rules otherwise prohibiting or requiring notification of *covered transactions* on a case-by-case basis.

(c) The regulations identify categories of *covered transactions* that are

notifiable transactions. A *notifiable transaction* is a transaction by a *U.S. person* or its *controlled foreign entity* with or resulting in the establishment of a *covered foreign person* that engages in a *covered activity* that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other *relevant agencies*, has determined may contribute to the threat to the national security of the United States identified in the Order, or the engagement of a *person of a country of concern* in a *covered activity* that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other *relevant agencies*, has determined may contribute to the threat to the national security of the United States identified in the Order. The regulations require a *U.S. person* to notify the Department of the Treasury of each such notifiable transaction by such *U.S. person* or its *controlled foreign entity*. The regulations also require a *U.S. person* to provide prompt notice to the Department of the Treasury upon acquiring actual knowledge after the *completion date* of a transaction of facts or circumstances that would have caused the transaction to be a *covered transaction* if the *U.S. person* had had such knowledge on the *completion date*. Additionally, any person who makes a representation, statement, or certification under this part is required to promptly notify the Department of the Treasury upon learning of a material omission or inaccuracy in such representation, statement, or certification.

(d) The regulations identify categories of *covered transactions* that are *prohibited transactions*. A *prohibited transaction* is a transaction by a *U.S. person* with or resulting in the establishment of a *covered foreign person* that engages in a *covered activity* that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other *relevant agencies*, has determined poses a particularly acute national security threat because of its potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*, or engagement of a *person of a country of concern* in a *covered activity* that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other *relevant agencies*, has determined poses a particularly acute national security threat because of its potential to significantly advance the military, intelligence, surveillance, or

cyber-enabled capabilities of a *country of concern*. The regulations prohibit a *U.S. person* from engaging in a *prohibited transaction* and also prohibit a *U.S. person* from *knowingly directing* a transaction that the *U.S. person* knows would be a *prohibited transaction* if engaged in by a *U.S. person*. The regulations also require a *U.S. person* to take all reasonable steps to prohibit and prevent any transaction by its *controlled foreign entity* that would be a *prohibited transaction* if undertaken by a *U.S. person*.

(e) Pursuant to the Order, the Secretary shall, as appropriate:

(1) Communicate with the Congress and the public with respect to the implementation of the Order;

(2) Consult with the Secretary of Commerce on industry engagement and analysis of notifiable transactions;

(3) Consult with the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, and the Director of National Intelligence on the implications for military, intelligence, surveillance, or cyber-enabled capabilities of covered national security technologies and products in the Order and potential covered national security technologies and products;

(4) Engage, together with the Secretary of State and the Secretary of Commerce, with allies and partners regarding the national security risks posed by countries of concern advancing covered national security technologies and products;

(5) Consult with the Secretary of State on foreign policy considerations related to the implementation of the Order, including but not limited to the issuance and amendment of regulations; and

(6) Investigate, in consultation with the heads of relevant agencies, as appropriate, violations of the Order or the regulations in this part and pursue available civil penalties for such violations.

§ 850.102 Relation of this part to other laws and regulations.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, license, authorization, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), or any other authority of the President or the Congress under the Constitution of the United States. This part is separate from, and independent of, the other parts of this subtitle.

Differing foreign policy and national security circumstances may result in differing interpretations of the same or similar language among the parts of this subtitle. No action taken pursuant to any other provision of law or regulation, including the other parts of this subtitle, authorizes any transaction prohibited by this part or alters any other obligation under this part. No action taken pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

§ 850.103 Rules of construction and interpretation.

(a) As used in this part, the term “including” (or variations such as “include”) means “including but not limited to.”

(b) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate.

(c) Section headings are included for convenience of reference only and shall not affect the interpretation of this part.

§ 850.104 Knowledge standard.

(a) Certain provisions of this part apply only if a *U.S. person* *knows* of a fact or circumstance. The term *knowledge* is defined in § 850.216. In determining whether a *U.S. person* is complying with this part or has violated any obligation under this part, the Department of the Treasury will assess whether such person has or had knowledge of the relevant facts and circumstances at the specified time.

(b) Such assessment as to whether, at the time of a given transaction, a *U.S. person* has or had knowledge of a given fact or circumstance will be made based on information a *U.S. person* had or could have had through a reasonable and diligent inquiry. A *U.S. person* that has failed to conduct a reasonable and diligent inquiry by the time of a given transaction may be assessed to have had reason to know of a given fact or circumstance, including facts or circumstances that would cause the transaction to be a covered transaction.

(c) In assessing whether a *U.S. person* has undertaken such a reasonable and diligent inquiry, the Department of the Treasury’s considerations will include the following, as applicable, among others that the Department of the Treasury deems relevant, with respect to a particular transaction:

(1) The inquiry a *U.S. person* has made regarding an investment target or other relevant transaction counterparty (such as a joint venture partner), including questions asked of the investment target or relevant

counterparty, as of the time of the transaction;

(2) The contractual representations or warranties the U.S. person has obtained or attempted to obtain from the investment target or other relevant transaction counterparty (such as a joint venture partner) with respect to the determination of a transaction's status as a covered transaction and status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;

(3) The efforts by the U.S. person as of the time of the transaction to obtain and consider available non-public information relevant to the determination of a transaction's status as a covered transaction and the status of an investment target or other relevant transaction counterparty (such as a joint venture partner) as a covered foreign person;

(4) Available public information, the efforts undertaken by the U.S. person to obtain and consider such information, and the degree to which other information available to the U.S. person as of the time of the transaction is consistent or inconsistent with such publicly available information;

(5) Whether the U.S. person purposefully avoided learning or seeking relevant information;

(6) The presence or absence of warning signs, which may include evasive responses or non-responses from an investment target or other relevant transaction counterparty (such as a joint venture partner) to questions or a refusal to provide information, contractual representations, or warranties; and

(7) The use of available public and commercial databases to identify and verify relevant information of an investment target or other relevant transaction counterparty (such as a joint venture partner).

(d) An assessment of whether a U.S. person has undertaken a reasonable and diligent inquiry shall be based on a consideration of the totality of relevant facts and circumstances.

Subpart B—Definitions

§ 850.201 Advanced packaging.

The term *advanced packaging* means to package integrated circuits in a manner that supports the two-and-one-half-dimensional (2.5D) or three-dimensional (3D) assembly of integrated circuits, such as by directly attaching one or more die or wafer using through-silicon vias, die or wafer bonding, heterogeneous integration, or other advanced methods and materials.

§ 850.202 AI system.

The term *AI system* means:

(a) A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments—*i.e.*, a system that:

(1) Uses data inputs to perceive real and virtual environments;

(2) Abstracts such perceptions into models through automated or algorithmic statistical analysis; and

(3) Uses model inference to make a classification, prediction, recommendation, or decision.

(b) Any data system, software, hardware, application, tool, or utility that operates in whole or in part using a system described in paragraph (a) of this section.

§ 850.203 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of the person filing a notification or providing other information that certifies under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notification or other information filed or provided:

(1) Fully complies with the regulations in this part; and

(2) Is accurate and complete in all material respects to the best knowledge of the person filing a notification or other information.

(b) For purposes of this section, a duly authorized designee is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer thereof; and

(3) In the case of any entity lacking partners and officers, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer of a corporation or otherwise authorized by the board of directors or equivalent to provide such certification.

(c) In each case described in paragraphs (b)(1) through (3) of this section, such designee must possess actual authority to make the certification on behalf of the person filing a notification or other information.

Note 1 to § 850.203: A template for certifications may be found at the Outbound Investment Security Program section of the Department of the Treasury website.

§ 850.204 Completion date.

The term *completion date* means:

(a) With respect to a covered transaction other than under § 850.210(a)(6), the earliest date upon which any interest, asset, property, or right is conveyed, assigned, delivered, or otherwise transferred to a U.S. person, or as applicable, its controlled foreign entity; or

(b) With respect to a covered transaction under § 850.210(a)(6), the earliest date upon which any interest, asset, property, or right in the relevant covered foreign person is conveyed, assigned, delivered, or otherwise transferred to the applicable fund.

§ 850.205 Contingent equity interest.

The term *contingent equity interest* means a financial interest (including debt) that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event or at the discretion of the *U.S. person* that holds the financial interest.

§ 850.206 Controlled foreign entity.

(a) The term *controlled foreign entity* means any entity incorporated in, or otherwise organized under the laws of, a country other than the United States of which a U.S. person is a parent.

(b) For purposes of this term, the following rules shall apply in determining whether an entity is a parent of another entity in a tiered ownership structure:

(1) Where the relationship between an entity and another entity is that of parent and subsidiary, the holdings of voting interest or voting power of the board, as applicable, of a subsidiary shall be fully attributed to the parent.

(2) Where the relationship between an entity and another entity is not that of parent and subsidiary (*i.e.*, because the holdings of voting interest or voting power of the board, as applicable, of the first entity in the second entity is 50 percent or less), then the indirect downstream holdings of voting interest or voting power of the board, as applicable, attributed to the first entity shall be determined proportionately.

(3) Where the circumstances in paragraphs (b)(1) and (2) of this section apply (*i.e.*, because a U.S. person holds both direct and indirect downstream holdings in the same entity), any holdings of voting interest shall be aggregated for the purposes of applying this definition, and any holdings of voting power of the board shall be aggregated for the purposes of applying this definition. Voting interest shall not be aggregated with voting power of the board for the purposes of applying this definition.

§ 850.207 Country of concern.

The term *country of concern* has the meaning given to it in the Annex to the Order.

§ 850.208 Covered activity.

The term *covered activity* means, in the context of a particular transaction, any of the activities referred to in the definition of notifiable transaction in § 850.217 or prohibited transaction in § 850.224.

§ 850.209 Covered foreign person.

(a) The term *covered foreign person* means:

(1) A person of a country of concern that engages in a covered activity; or

(2) A person that directly or indirectly holds a board seat on, a voting or equity interest (other than through securities or interests that would satisfy the conditions in § 850.501(a) if held by a U.S. person) in, or any contractual power to direct or cause the direction of the management or policies of any person or persons described in paragraph (a)(1) of this section from or through which it:

(i) Derives more than 50 percent of its revenue individually, or as aggregated across such persons from each of which it derives at least \$50,000 (or equivalent) of its revenue, on an annual basis;

(ii) Derives more than 50 percent of its net income individually, or as aggregated across such persons from each of which it derives at least \$50,000 (or equivalent) of its net income, on an annual basis;

(iii) Incurs more than 50 percent of its capital expenditure individually, or as aggregated across such persons from each of which it incurs at least \$50,000 (or equivalent) of its capital expenditure, on an annual basis; or

(iv) Incurs more than 50 percent of its operating expenses individually, or as aggregated across such persons from each of which it incurs at least \$50,000 (or equivalent) of its operating expenses, on an annual basis.

(3) With respect to a covered transaction described in § 850.210(a)(5), the person of a country of concern that participates in the joint venture is deemed to be a covered foreign person by virtue of its participation in the joint venture.

(b) For purposes of paragraph (a)(2) of this section:

(1) Calculations shall be based on an audited financial statement from the most recent year. If an audited financial statement is not available, the most recent unaudited financial statement shall be used instead. If no financial statement is available, an independent appraisal shall be used instead. If no

independent appraisal is available, a good-faith estimate shall be used instead.

(2) Where an amount is not denominated in U.S. dollars, the U.S. dollar equivalent shall be determined based on the most recent published rate of exchange available on the Department of the Treasury's website.

Note 1 to § 850.209: References in this section to revenue, net income, capital expenditure, or operating expenses refer to overall revenue, net income, capital expenditure, or operating expenses, as applicable, without subtracting amounts attributable to persons described in paragraph (a)(1) of this section of less than \$50,000 (or equivalent).

§ 850.210 Covered transaction.

(a) The term *covered transaction* means a U.S. person's direct or indirect:

(1) Acquisition of an equity interest or contingent equity interest in a person that the U.S. person knows at the time of the acquisition is a covered foreign person;

(2) Provision of a loan or a similar debt financing arrangement to a person that the U.S. person knows at the time of the provision is a covered foreign person, where such debt financing affords or will afford the U.S. person an interest in profits of the covered foreign person, the right to appoint members of the board of directors (or equivalent) of the covered foreign person, or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan;

(3) Conversion of a contingent equity interest into an equity interest in a person that the U.S. person knows at the time of the conversion is a covered foreign person, where the contingent equity interest was acquired by the U.S. person on or after January 2, 2025;

(4) Acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern that the U.S. person knows at the time of such acquisition, leasing, or other development will result in, or that the U.S. person plans to result in:

(i) The establishment of a covered foreign person; or

(ii) The engagement of a person of a country of concern in a covered activity;

(5) Entrance into a joint venture, wherever located, that is formed with a person of a country of concern, and that the subject U.S. person knows at the time of entrance into the joint venture that the joint venture will engage, or plans to engage, in a covered activity; or

(6) Acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund (in

each case where the fund is not a U.S. person) that a U.S. person knows at the time of the acquisition likely will invest in a person of a country of concern that is in the semiconductors and microelectronics, quantum information technologies, or artificial intelligence sectors, and such fund undertakes a transaction that would be a covered transaction if undertaken by a U.S. person.

(b) Notwithstanding paragraph (a) of this section, a transaction is not a covered transaction if it is:

(1) An excepted transaction as set forth in § 850.501; or

(2) For the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

(c) The acquisition of a contingent interest described in paragraph (a)(1) of this section may constitute a covered transaction, and the subsequent occurrence of a conversion event described in paragraph (a)(3) of this section may constitute a separate covered transaction. A U.S. person should assess each of the acquisition and the conversion to determine the applicability of this part.

Note 1 to § 850.210: An indirect covered transaction includes a U.S. person's use of an intermediary to engage in a transaction that would be a covered transaction if engaged in directly by a U.S. person. However, for purposes of paragraph (a)(1) of this section, a U.S. person is not considered to have acquired an indirect equity interest or contingent equity interest in a covered foreign person when the U.S. person acquires a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund and that fund then acquires an equity interest or contingent equity interest in a covered foreign person. (A U.S. person's acquisition of a limited partner or equivalent interest in a non-U.S. person venture capital fund, private equity fund, fund of funds, or other pooled investment fund may, however, be a covered transaction under paragraph (a)(6) of this section.)

Note 2 to § 850.210: Neither the issuance of a secured loan or similar debt financing for which equity is pledged as collateral, nor the acquisition of such secured debt on the secondary market, is an acquisition of an equity interest. However, foreclosure on collateral where the debtholder takes possession of the pledged equity is an acquisition of an equity interest; *provided that* such an acquisition is not a covered transaction where the equity was pledged prior to January 2, 2025, or where the U.S. person did not know at the time of issuing or acquiring the debt that the pledged equity was in a covered foreign person.

§ 850.211 Develop.

Except as used in § 850.210(a)(4), the term *develop* means to engage in any stages prior to serial production, such as design or substantive modification, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts.

§ 850.212 Entity.

The term *entity* means any branch, partnership, association, estate, joint venture, trust, corporation or division of a corporation, group, sub-group, or other organization (whether or not organized under the laws of any State or foreign state).

§ 850.213 Excepted transaction.

The term *excepted transaction* means a transaction that meets the criteria in § 850.501.

§ 850.214 Fabricate.

The term *fabricate* means to form devices such as transistors, poly capacitors, non-metal resistors, and diodes on a wafer of semiconductor material.

§ 850.215 Knowingly directing.

The term *knowingly directing* has the definition set forth in § 850.303.

§ 850.216 Knowledge.

Knowledge of a fact or circumstance (the term may be a variant, such as “know”) means:

- (a) Actual knowledge that a fact or circumstance exists or is substantially certain to occur;
- (b) An awareness of a high probability of a fact or circumstance’s existence or future occurrence; or
- (c) Reason to know of a fact or circumstance’s existence.

Note 1 to § 850.216: See the discussion of the knowledge standard in § 850.104 for more information about how this term is applied in this part.

§ 850.217 Notifiable transaction.

The term *notifiable transaction* means a covered transaction (that is not a prohibited transaction) in which the relevant covered foreign person or, with respect to a covered transaction described in § 850.210(a)(5), the relevant joint venture:

- (a) Designs any integrated circuit that is not described in § 850.224(c);
- (b) Fabricates any integrated circuit that is not described in § 850.224(d);
- (c) Packages any integrated circuit that is not described in § 850.224(e);

(d) Develops any AI system that is not described in § 850.224(j) or (k) and that is:

- (1) Designed to be used for any military end use (e.g., for weapons targeting, target identification, combat simulation, military vehicle or weapons control, military decision-making, weapons design (including chemical, biological, radiological, or nuclear weapons), or combat system logistics and maintenance); or government intelligence or mass-surveillance end use (e.g., through incorporation of features such as mining text, audio, or video; image recognition; location tracking; or surreptitious listening devices);
- (2) Intended by the covered foreign person or joint venture to be used for any of the following:
 - (i) Cybersecurity applications;
 - (ii) Digital forensics tools;
 - (iii) Penetration testing tools; or
 - (iv) The control of robotic systems; or
- (3) Trained using a quantity of computing power greater than 10^{23} computational operations (e.g., integer or floating-point operations).

Note 1 to § 850.217: Consistent with section 3 of the Order, the Secretary, in consultation with the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, shall periodically assess whether the criterion described in paragraph (d)(3) of this section is serving to effectively address threats to the national security of the United States described in the Order and make updates, as appropriate, through public notice.

Note 2 to § 850.217: Consistent with the definition for develop at § 850.211, to develop an AI system defined at § 850.202(b) in a manner subject to these notification requirements, the relevant covered foreign person or joint venture must engage in the activities enumerated in § 850.211, such as design or substantive modification, with respect to the third-party AI model or machine-based system that is being used by a data system, software, hardware, application, tool, or utility to operate in whole or in part.

Note 3 to § 850.217: For purposes of paragraph (d) of this section, a person customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for its own internal, non-commercial use (e.g., not for sale or licensing) would not implicate the notification requirements for related transactions solely on that basis unless the person’s internal, non-commercial use is for government intelligence, mass-surveillance, or military end use, or for digital forensics tools, penetration testing tools, or the control of robotic systems.

Note 4 to § 850.217: For purposes of paragraph (d) of this section, a person customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for its own internal, non-commercial use (e.g., not for sale or licensing) would not implicate the notification requirements for related transactions solely on that basis unless the person’s internal, non-commercial use is for government intelligence, mass-surveillance, or military end use, or for digital forensics tools, penetration testing tools, or the control of robotic systems.

§ 850.218 Package.

The term *package* means to assemble various components, such as the

integrated circuit die, lead frames, interconnects, and substrate materials to safeguard the semiconductor device and provide electrical connections between different parts of the die.

§ 850.219 Parent.

The term *parent* means, with respect to an entity:

(a) A person who or which directly or indirectly holds more than 50 percent of:

(1) The outstanding voting interest in the entity; or

(2) The voting power of the board of the entity;

(b) The general partner, managing member, or equivalent of the entity; or

(c) The investment adviser to any entity that is a pooled investment fund, with “investment adviser” as defined in the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

Note 1 to § 850.219: Any entity that meets the conditions of paragraph (a), (b), or (c) of this section with respect to another entity is the parent, even if the parent entity is an intermediate entity and not the ultimate parent.

§ 850.220 Person.

The term *person* means any individual or entity.

§ 850.221 Person of a country of concern.

The term *person of a country of concern* means:

(a) Any individual that:

(1) Is a citizen or permanent resident of a country of concern;

(2) Is not a U.S. citizen; and

(3) Is not a permanent resident of the United States;

(b) An entity with a principal place of business in, headquartered in, or incorporated in or otherwise organized under the laws of, a country of concern;

(c) The government of a country of concern, including any political subdivision, political party, agency, or instrumentality thereof; any person acting for or on behalf of the government of a country of concern; or any entity with respect to which the government of a country of concern holds individually or in the aggregate, directly or indirectly, 50 percent or more of the entity’s outstanding voting interest, voting power of the board, or equity interest, or otherwise possesses the power to direct or cause the direction of the management and policies of such entity (whether through the ownership of voting securities, by contract, or otherwise);

(d) Any entity in which one or more persons identified in paragraph (a), (b), or (c) of this section, individually or in the aggregate, directly or indirectly,

holds at least 50 percent of any of the following interests of such entity: outstanding voting interest, voting power of the board, or equity interest; or

(e) Any entity in which one or more persons identified in paragraph (d) of this section, individually or in the aggregate, directly or indirectly, holds at least 50 percent of any of the following interests of such entity: outstanding voting interest, voting power of the board, or equity interest.

§ 850.222 Principal place of business.

The term *principal place of business* means the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

§ 850.223 Produce.

The term *produce* means to engage in any of the post-development stages of realizing the relevant technology or product, such as engineering, manufacture, integration, assembly, inspection, testing, and quality assurance.

§ 850.224 Prohibited transaction.

The term *prohibited transaction* means a covered transaction in which the relevant covered foreign person or, with respect to a covered transaction described in § 850.210(a)(5), the relevant joint venture:

(a) Develops or produces any electronic design automation software for the design of integrated circuits or advanced packaging;

(b) Develops or produces any:
(1) Front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits, including equipment used in the production stages from a blank wafer or substrate to a completed wafer or substrate (*i.e.*, the integrated circuits are processed but they are still on the wafer or substrate);

(2) Equipment for performing volume advanced packaging; or

(3) Commodity, material, software, or technology designed exclusively for use in or with extreme ultraviolet lithography fabrication equipment.

(c) Designs any integrated circuit that meets or exceeds the performance parameters in Export Control Classification Number 3A090.a in supplement No. 1 to 15 CFR part 774, or integrated circuits designed for operation at or below 4.5 Kelvin;

(d) Fabricates any of the following:

(1) Logic integrated circuits using a non-planar transistor architecture or

with a production technology node of 16/14 nanometers or less, including fully depleted silicon-on-insulator (FDSOI) integrated circuits;

(2) NOT-AND (NAND) memory integrated circuits with 128 layers or more;

(3) Dynamic random-access memory (DRAM) integrated circuits using a technology node of 18 nanometer half-pitch or less;

(4) Integrated circuits manufactured from a gallium-based compound semiconductor;

(5) Integrated circuits using graphene transistors or carbon nanotubes; or

(6) Integrated circuits designed for operation at or below 4.5 Kelvin;

(e) Packages any integrated circuit using advanced packaging techniques;

(f) Develops, installs, sells, or produces any supercomputer enabled by advanced integrated circuits that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope;

(g) Develops a quantum computer or produces any of the critical components required to produce a quantum computer such as a dilution refrigerator or two-stage pulse tube cryocooler;

(h) Develops or produces any quantum sensing platform designed for, or which the relevant covered foreign person intends to be used for, any military, government intelligence, or mass-surveillance end use;

(i) Develops or produces any quantum network or quantum communication system designed for, or which the relevant covered foreign person intends to be used for:

(1) Networking to scale up the capabilities of quantum computers, such as for the purposes of breaking or compromising encryption;

(2) Secure communications, such as quantum key distribution; or

(3) Any other application that has any military, government intelligence, or mass-surveillance end use;

(j) Develops any AI system that is designed to be exclusively used for, or which the relevant covered foreign person intends to be used for, any:

(1) Military end use (*e.g.*, for weapons targeting, target identification, combat simulation, military vehicle or weapon control, military decision-making, weapons design (including chemical, biological, radiological, or nuclear weapons), or combat system logistics and maintenance); or

(2) Government intelligence or mass-surveillance end use (*e.g.*, through incorporation of features such as mining

text, audio, or video; image recognition; location tracking; or surreptitious listening devices);

(k) Develops any AI system that is trained using a quantity of computing power greater than:

(1) 10^{25} computational operations (*e.g.*, integer or floating-point operations); or

(2) 10^{24} computational operations (*e.g.*, integer or floating-point operations) using primarily biological sequence data;

(l) Meets the conditions set forth in § 850.209(a)(2) because of its relationship to one or more covered foreign persons engaged in any covered activity described in any of paragraphs (a) through (k) of this section; or
(m) Engages in a covered activity, whether referenced in this section or § 850.217 and is:

(1) Included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);

(2) Included on the Bureau of Industry and Security's Military End User List (15 CFR part 744, supplement no. 7);

(3) Meets the definition of "Military Intelligence End-User" by the Bureau of Industry and Security in 15 CFR 744.22(f)(2);

(4) Included on the Department of the Treasury's list of Specially Designated Nationals and Blocked Persons (SDN List), or is an entity in which one or more individuals or entities included on the SDN List, individually or in the aggregate, directly or indirectly, own a 50 percent or greater interest;

(5) Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC List); or

(6) Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189.

Note 1 to § 850.224: Consistent with section 3 of the Order, the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, shall periodically assess whether the criterion described in paragraph (k) of this section is serving to effectively address threats to the national security of the United States described in the Order and make updates, as appropriate, through public notice.

Note 2 to § 850.224: Consistent with the definition for develop at § 850.211, to develop an AI system defined at § 850.202(b) in a manner subject to these prohibition requirements, the relevant covered foreign person or joint venture must engage in the activities enumerated in § 850.211, such as design or substantive modification, with respect to the third-party AI model or machine-based system that is being used by a data system, software, hardware, application, tool, or utility to operate in whole or in part.

Note 3 to § 850.224: For purposes of paragraphs (j) and (k) of this section, a person customizing, configuring, or fine-tuning a third-party AI model or machine-based system strictly for its own internal, non-commercial use (e.g., not for sale or licensing) would not implicate a prohibition for related transactions solely on that basis unless the person's internal, non-commercial use is for government intelligence, mass-surveillance, or military end use, or for digital forensics tools, penetration testing tools, or the control of robotic systems.

§ 850.225 Quantum computer.

The term *quantum computer* means a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference, or entanglement.

§ 850.226 Relevant agencies.

The term *relevant agencies* means the Departments of State, Defense, Justice, Commerce, Energy, and Homeland Security, the Office of the United States Trade Representative, the Office of Science and Technology Policy, the Office of the Director of National Intelligence, the Office of the National Cyber Director, and any other department, agency, or office the Secretary determines appropriate.

§ 850.227 Subsidiary.

The term *subsidiary* means, with respect to a person, an entity of which such person is a parent.

§ 850.228 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States of America, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States of America, or any subdivision of the foregoing, and includes the territorial sea of the United States of America. For purposes of this part, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized “in the United States.”

§ 850.229 U.S. person.

The term *U.S. person* means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, or any person in the United States.

Subpart C—Prohibited Transactions and Other Prohibited Activities

§ 850.301 Undertaking a prohibited transaction.

A U.S. person may not engage in a prohibited transaction unless an exemption for that transaction has been granted under § 850.502.

§ 850.302 Actions of a controlled foreign entity.

(a) A U.S. person shall take all reasonable steps to prohibit and prevent any transaction by its controlled foreign entity that would be a prohibited transaction if engaged in by a U.S. person.

(b) If a controlled foreign entity engages in a transaction that would be a prohibited transaction if engaged in by a U.S. person, in determining whether the relevant U.S. person took all reasonable steps to prohibit and prevent such transaction, the Department of the Treasury will consider, among other factors, any of the following with respect to a U.S. person and its controlled foreign entity:

- (1) The execution of agreements with respect to compliance with this part between the subject U.S. person and its controlled foreign entity;
- (2) The existence and exercise of governance or shareholder rights by the U.S. person with respect to the controlled foreign entity, where applicable;
- (3) The existence and implementation of periodic training and internal reporting requirements by the U.S. person and its controlled foreign entity with respect to compliance with this part;

(4) The implementation of appropriate and documented internal controls, including internal policies, procedures, or guidelines that are periodically reviewed internally, by the U.S. person and its controlled foreign entity; and

(5) Implementation of a documented testing and/or auditing process of internal policies, procedures, or guidelines.

Note 1 to § 850.302: Findings of violations of this section and decisions related to enforcement and penalties will be made based on a consideration of the totality of relevant facts and circumstances, including whether the U.S. person has taken the steps described in paragraph (b) of this section and whether such steps were reasonable in light of the relevant facts and circumstances.

§ 850.303 Knowingly directing an otherwise prohibited transaction.

(a) A U.S. person is prohibited from knowingly directing a transaction by a non-U.S. person that the U.S. person knows at the time of the transaction

would be a prohibited transaction if engaged in by a U.S. person. For purposes of this section, a U.S. person “knowingly directs” a transaction when the U.S. person has authority, individually or as part of a group, to make or substantially participate in decisions on behalf of a non-U.S. person, and exercises that authority to direct, order, decide upon, or approve a transaction. Such authority exists when a U.S. person is an officer, director, or otherwise possesses executive responsibilities at a non-U.S. person.

(b) A U.S. person that has the authority described in paragraph (a) of this section and recuses themselves from each of the following activities will not be considered to have exercised their authority to direct, order, decide upon, or approve a transaction:

- (1) Participating in formal approval and decision-making processes related to the transaction, including making a recommendation;
- (2) Reviewing, editing, commenting on, approving, and signing relevant transaction documents; and
- (3) Engaging in negotiations with the investment target (or, as applicable, the relevant transaction counterparty, such as a joint venture partner).

Subpart D—Notifiable Transactions and Other Notifiable Activities

§ 850.401 Undertaking a notifiable transaction.

A U.S. person that undertakes a notifiable transaction shall file a notification of that transaction with the Department of the Treasury pursuant to § 850.404.

§ 850.402 Notification of actions of a controlled foreign entity.

A U.S. person shall file a notification with the Department of the Treasury pursuant to § 850.404 with respect to any transaction by a controlled foreign entity of that U.S. person that would be a notifiable transaction if engaged in by a U.S. person.

§ 850.403 Notification of post-transaction knowledge.

A U.S. person that acquires actual knowledge after the completion date of a transaction of a fact or circumstance such that the transaction would have been a covered transaction if such knowledge had been possessed by the relevant U.S. person at the time of the transaction shall promptly, and in no event later than 30 calendar days following the acquisition of such knowledge, submit a notification pursuant to § 850.404. This requirement applies regardless of whether the

transaction would have been a notifiable transaction or a prohibited transaction.

Note 1 to § 850.403: A U.S. person's submission of a notification pursuant to this section shall not preclude a finding by the Department of the Treasury that as a factual matter the U.S. person had relevant knowledge of the transaction's status at the time of the transaction.

§ 850.404 Procedures for notifications.

(a) A U.S. person that has an obligation under § 850.401, § 850.402, or § 850.403 shall file an electronic copy of the notification of the transaction with the Department of the Treasury including the information set out in § 850.405 and the certification referred to in § 850.203. The U.S. person shall follow the electronic filing instructions posted on the Department of the Treasury's Outbound Investment Security Program website. No communications or submissions other than those described in this section shall constitute the filing of a notification for purposes of this part.

(b) The Department of the Treasury may contact a U.S. person that has filed a notification with questions or document requests related to the transaction or compliance with this part. The U.S. person shall respond to any such questions or requests within the time frame and in the manner specified by the Department of the Treasury. Information and other documents provided by the U.S. person to the Department of the Treasury after the filing of the notification under this section shall be deemed part of the notification and shall be subject to the certification referred to in § 850.203.

(c) A U.S. person shall file a notification under § 850.401 or § 850.402 with the Department of the Treasury no later than 30 calendar days following the completion date of a notifiable transaction. A U.S. person shall file a notification required under § 850.403 with the Department of the Treasury no later than 30 calendar days after it acquires the knowledge referred to in § 850.403.

(d) If a U.S. person files a notification prior to the completion date of the notifiable transaction, the U.S. person shall update such notification no later than 30 calendar days following the completion date of the notifiable transaction if information in the original filing has materially changed.

(e) A U.S. person shall inform the Department of the Treasury in writing no later than 30 calendar days following the acquisition of previously unavailable information required under § 850.405.

Note 1 to § 850.404: While the Department of the Treasury may engage with the U.S. person following notification, it is also possible the U.S. person will receive no communication from the Department of the Treasury other than an electronic acknowledgment of receipt after notification is submitted.

§ 850.405 Content of notifications.

(a) A U.S. person that has an obligation under this part to file a notification shall provide the information set forth in this section, which must be accurate and complete in all material respects, subject to paragraph (d) of this section.

(b) A notification shall provide, as applicable:

(1) The contact information of a representative of the U.S. person filing the notification who is available to communicate with the Department of the Treasury about the notification including such representative's name, title, email address, mailing address, phone number, and employer;

(2) A description of the U.S. person, including name, and as applicable, principal place of business and place of incorporation or legal organization, company address, website, and, if the U.S. person is an entity, such U.S. person's ultimate owner;

(3) A post-transaction organizational chart of the U.S. person that includes the name and principal place of business and place of incorporation or legal organization of the intermediate and ultimate parent entities of the U.S. person, identifies the U.S. person's relationship with any controlled foreign entity or entities of the U.S. person, and identifies the covered foreign person and other relevant persons involved in the transaction;

(4) A brief description of the commercial rationale for the transaction;

(5) A brief description of why the U.S. person has determined the transaction is a covered transaction that includes a discussion of the nature of the transaction, its structure, reference to the paragraph of § 850.210(a) that best describes the transaction type, and whether the notification is being submitted pursuant to § 850.401, § 850.402, or § 850.403.

(6) The status of the transaction, including the actual or expected completion date of the transaction;

(7) The total transaction value in U.S. dollars or U.S. dollar equivalent, an explanation of how the transaction value was determined, and a description of the consideration for the transaction (including cash, securities, other assets, and debt forgiveness);

(8) The aggregate equity interest, voting interest, board seats (or

equivalent holdings) of the U.S. person and its affiliates in the covered foreign person (or in the joint venture, as applicable) following the completion date of the transaction, including a description of any agreements or commitments for future investment or options to make future investments in the covered foreign person (or joint venture);

(9) Information about the covered foreign person, including its name, and as applicable, principal place of business and place of incorporation or legal organization, company address, website, and if the covered foreign person is an entity, such covered foreign person's ultimate owner, and the full legal names and titles of each officer, director, and other member of management of the covered foreign person, and a post-transaction organizational chart of the covered foreign person that includes the name and principal place of business and place of incorporation or legal organization of the intermediate and ultimate parent entities of the covered foreign person;

(10) Identification and description of each of the covered activity or activities undertaken by the covered foreign person that makes the transaction a covered transaction, as well as a brief description of the known end use(s) and end user(s) of the covered foreign person's technology, products, or services;

(11) A statement describing the attributes that cause the entity to be a covered foreign person, and any other relevant information regarding the covered foreign person and covered activity or activities;

(12) If a transaction involves a covered activity identified in § 850.217(a), (b), or (c), identification of the technology node(s) at which any applicable product is produced; and

(13) If the notification is required under § 850.403:

(i) Identification of the fact or circumstance of which the U.S. person acquired knowledge post-transaction;

(ii) The date upon which the U.S. person acquired such knowledge;

(iii) A statement explaining why the U.S. person did not possess or obtain such knowledge at the time of the transaction; and

(iv) A description of any pre-transaction diligence undertaken by the U.S. person, including, as applicable, any steps described in § 850.104(c).

(c) The U.S. person shall maintain a copy of the notification filed and supporting documentation for a period of ten years from the date of the filing. Such supporting documentation shall

include, as applicable, any pitch decks, marketing letters, and offering memorandums; transaction documents including side letters and investment agreements; and due diligence materials related to the transaction. The U.S. person shall make all supporting documentation available upon request by the Department of the Treasury.

(d) If the U.S. person does not provide responses to the information required in paragraph (b) of this section, the U.S. person shall provide sufficient explanation for why the information is unavailable or otherwise cannot be obtained and explain the U.S. person's efforts to obtain such information. If such information subsequently becomes available, the U.S. person shall provide such information to the Department of the Treasury promptly, and no later than 30 calendar days following the availability of such information.

§ 850.406 Notice of material omission or inaccuracy.

A person who has made any representation, statement, or certification subject to this part shall inform the Department of the Treasury in writing promptly, and in no event later than 30 calendar days after learning of a material omission or inaccuracy in such representation, statement, or certification.

Subpart E—Exceptions and Exemptions

§ 850.501 Excepted transaction.

A transaction that would be either a prohibited transaction or a notifiable transaction if engaged in by a U.S. person but for this section is not a prohibited transaction or a notifiable transaction, as applicable, if the conditions set forth in this section are met. In that case, the transaction is an excepted transaction. The following transactions are excepted transactions:

(a)(1) An investment by a U.S. person:

(i) In any publicly traded security, with “security” as defined in section 3(a)(10) of the Securities Exchange Act of 1934, as amended, at 15 U.S.C. 78c(a)(10), denominated in any currency, and that trades on a securities exchange or through the method of trading that is commonly referred to as “over-the-counter,” in any jurisdiction;

(ii) In a security issued by:

(A) Any “investment company” as defined in section 3(a)(1) of the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a–3(a)(1), that is registered with the U.S. Securities and Exchange Commission, such as index funds, mutual funds, or exchange traded funds; or

(B) Any company that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a–53;

(iii) Made as a limited partner or equivalent in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund other than as described in paragraph (a)(1)(ii) of this section where:

(A) The limited partner or equivalent's committed capital is not more than \$2,000,000, aggregated across any investment and co-investment vehicles of the fund; or

(B) The limited partner or equivalent has secured a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a prohibited transaction or notifiable transaction, as applicable, if engaged in by a U.S. person; or

(iv) In a derivative, so long as such derivative does not confer the right to acquire equity, any rights associated with equity, or any assets in or of a covered foreign person.

(2) Notwithstanding paragraph (a)(1) of this section, an investment is not an excepted transaction if it affords the U.S. person rights beyond standard minority shareholder protections with respect to the covered foreign person. Such standard minority shareholder protections include:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(iii) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(iv) The right to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(v) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such stock; and

(vi) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (a)(2)(i) through (v) of this section;

(b) The acquisition by a U.S. person of equity or other interests in an entity held by one or more persons of a country of concern; *provided that:*

(1) The U.S. person is acquiring all equity or other interests in such entity held by all persons of a country of concern; and

(2) Following such acquisition, the entity does not constitute a covered foreign person;

(c) A transaction that, but for this paragraph, would be a covered transaction between a U.S. person and its controlled foreign entity that supports operations that are not covered activities or that maintains covered activities that the controlled foreign entity was engaged in prior to January 2, 2025;

(d) A transaction made after January 2, 2025, pursuant to a binding, uncalled capital commitment entered into before January 2, 2025;

(e) The acquisition of a voting interest in a covered foreign person by a U.S. person upon default or other condition involving a loan or a similar financing arrangement, where the loan was made by a syndicate of banks in a loan participation where the U.S. person lender(s) in the syndicate:

(1) Cannot on its own initiate any action vis-à-vis the debtor; and

(2) Is not the syndication agent;

(f) The receipt of employment compensation by an individual in the form of an award of equity or the grant of an option to purchase equity in a covered foreign person, or the exercise of such option; or

(g)(1) A transaction that is:

(i) With or involving a person of a country or territory outside of the United States designated by the Secretary, after taking into account whether the country or territory is addressing national security risks substantially similar to those described in the Order and related to outbound investment; and

(ii) Of a type for which the Secretary has determined that the related national security concerns are likely to be adequately addressed by measures taken or that may be taken by the government of the relevant country or territory.

(2) Prior to making a designation or determination under this paragraph (g), the Secretary shall consult with the Secretary of State, the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies.

(3) The Secretary's designations and determinations under paragraph (g)(1) of this section shall be made available through public notice.

(4) The Secretary may rescind a designation or determination under

paragraph (g)(1) of this section if the Secretary, in consultation with the Secretary of State, Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, determines that such a rescission is appropriate. Any rescission shall be made available through public notice.

§ 850.502 National interest exemption.

(a) The Secretary, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may determine that a covered transaction is in the national interest of the United States and therefore is exempt from applicable provisions in subparts C and D of this part (excluding §§ 850.406, 850.603, and 850.604). Such a determination may be made following a request by a U.S. person on its own behalf or on behalf of its controlled foreign entity.

(b) Any determination pursuant to paragraph (a) of this section will be based on a consideration of the totality of the relevant facts and circumstances and may be informed by, among other considerations, the transaction's effect on critical U.S. supply chain needs; domestic production needs in the United States for projected national defense requirements; United States' technological leadership globally in areas affecting U.S. national security; and impact on U.S. national security if the U.S. person is prohibited from undertaking the transaction.

(c) A U.S. person seeking a national interest exemption shall submit relevant information to the Department of the Treasury regarding the transaction and shall articulate the basis for the request, including the U.S. person's analysis of the transaction's potential impact on the national interest of the United States and the certification referred to in § 850.203. Information and other documents submitted by the U.S. person to the Department of the Treasury under this section shall be deemed part of the national interest exemption request. The U.S. person shall follow the instructions posted on the Department of the Treasury's Outbound Investment Security Program website. No communications or submissions other than those described in this section shall constitute a request for a national interest exemption. The Department of the Treasury may request additional information that may include some or all of the information required under § 850.405.

(d) A determination that a covered transaction is exempt under this section may be subject to binding conditions.

(e) No determination pursuant to paragraph (a) of this section will be valid unless provided to the subject U.S. person in writing and signed by the Assistant Secretary or Deputy Assistant Secretary of the Treasury for Investment Security.

Note 1 to § 850.502: A process and related information for exemption requests will be made available on the Department of the Treasury's Outbound Investment Security Program website.

§ 850.503 IEEPA statutory exception.

Conduct referred to in 50 U.S.C. 1702(b) shall not be regulated or prohibited, directly or indirectly, by this part.

Subpart F—Violations

§ 850.601 Taking actions prohibited by this part.

The taking of any action prohibited by this part is a violation of this part.

§ 850.602 Failure to fulfill requirements.

Failure to take any action required by this part, and within the time frame and in the manner specified by this part, as applicable, is a violation of this part.

§ 850.603 Misrepresentation, concealment, and omission of facts.

With respect to any information submission to or communication with the Department of the Treasury pursuant to any provision of this part, the making of any materially false or misleading representation, statement, or certification, or falsifying, concealing or omitting any material fact is a violation of this part.

§ 850.604 Evasions; attempts; causing violations; conspiracies.

(a) Any action on or after the effective date of this part that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

Subpart G—Penalties and Disclosures

§ 850.701 Penalties.

(a) Section 206 of IEEPA applies to any person subject to the jurisdiction of the United States who violates, attempts to violate, conspires to violate, or causes a violation of any order, regulation, or prohibition issued by or pursuant to the direction or authorization of the Secretary pursuant to this part or otherwise under IEEPA.

(1) A civil penalty may be imposed on any person who violates, attempts to

violate, conspires to violate, or causes a violation of any order, regulation, or prohibition issued under IEEPA, including any provision of this part in an amount not to exceed the greater of:

(i) \$250,000, as such amount is adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Pub. L. 101–410, 28 U.S.C. 2461 note); or

(ii) An amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation, attempt to violate, conspiracy to violate, or causing of a violation of any order, regulation, or prohibition issued under IEEPA, including any provision of this part, shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) The Secretary may refer potential criminal violations of the Order, or of this part, to the Attorney General.

(c) The civil penalties provided for in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Pub. L. 101–410, 28 U.S.C. 2461 note). Notice of the maximum penalty which may be assessed under this section will be published in the **Federal Register** and on Treasury's Outbound Investment Security Program website on an annual basis on or before January 15 of each calendar year.

(d) The criminal penalties provided for in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(e) The penalties available under this section are without prejudice to other penalties, civil or criminal, and forfeiture of property, available under other applicable law.

(f) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 850.702 Administrative collection; referral to United States Department of Justice.

The imposition of a monetary penalty under this part creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty assessed if not paid. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty.

§ 850.703 Divestment.

(a) The Secretary, in consultation with the heads of relevant agencies, as appropriate, may take any action authorized under IEEPA to nullify, void, or otherwise compel the divestment of any prohibited transaction entered into after the effective date of this part.

(b) The Secretary may refer any action taken under paragraph (a) of this section to the Attorney General to seek appropriate relief to enforce such action.

§ 850.704 Voluntary self-disclosure.

(a) Any person who has engaged in conduct that may constitute a violation of this part may submit a voluntary self-disclosure of that conduct to the Department of the Treasury.

(b) In determining the appropriate response to any violation, the Department of the Treasury will consider the submission and the timeliness of any voluntary self-disclosure.

(c) In assessing the timeliness of a voluntary self-disclosure, the Department of the Treasury will consider whether it has learned of the conduct prior to the voluntary self-disclosure. The Department of the Treasury may consider disclosure of a violation to another government agency other than the Department of the Treasury as a voluntary self-disclosure based on a case-by-case assessment.

(d) Notwithstanding the foregoing, identification to the Department of the Treasury of conduct that may constitute a violation of this part may not be assessed to be a voluntary self-disclosure in one or more of the following circumstances:

(1) A third party has provided a prior disclosure to the Department of the Treasury of the conduct or similar conduct related to the same pattern or practice, regardless of whether the disclosing person knew of the third party's prior disclosure;

(2) The disclosure includes materially false or misleading information;

(3) The disclosure, when considered along with supplemental information timely provided by the disclosing person, is materially incomplete;

(4) The disclosure is not self-initiated, including when the disclosure results from a suggestion or order of a Federal or state agency or official;

(5) The disclosure is a response to an administrative subpoena or other inquiry from the Department of the Treasury or another government agency;

(6) The disclosure is made about the conduct of an entity by an individual in such entity without the authorization of such entity's senior management; or

(7) The filing is made pursuant to a required notification under this part, including § 850.403 or § 850.406.

(e) A voluntary self-disclosure to the Department of the Treasury must take the form of a written notice describing the conduct that may constitute a violation and each of the persons involved. A voluntary self-disclosure must include, or be followed within a reasonable period of time by, a report of sufficient detail to afford a complete understanding of the conduct that may constitute the violation. A person making a voluntary self-disclosure must respond in a timely manner to any follow-up inquiries by the Department of the Treasury.

Subpart H—Provision and Handling of Information

§ 850.801 Confidentiality.

(a) Except to the extent required by law or otherwise provided in paragraphs (b) through (d) of this section, information or documentary materials not otherwise publicly available that are submitted to the Department of the Treasury under this part shall not be disclosed to the public.

(b) Notwithstanding paragraph (a) of this section, except to the extent prohibited by law, the Department of the Treasury may disclose information or documentary materials that are not otherwise publicly available, subject to appropriate confidentiality and classification requirements, when such information or documentary materials are:

(1) Relevant to any judicial or administrative action or proceeding;

(2) Provided to Congress or to any duly authorized committee or subcommittee of Congress; or

(3) Provided to any domestic governmental entity, or to any foreign governmental entity of a United States partner or ally, where the information or documentary materials are important to the national security analysis or actions of such governmental entity or the Department of the Treasury.

(c) Notwithstanding paragraph (a) of this section, the Department of the Treasury may disclose to third parties

information or documentary materials that are not otherwise publicly available when the person who submitted or filed the information or documentary materials has consented to its disclosure to such third parties.

(d) Notwithstanding paragraph (a) of this section, the Department of the Treasury may disclose information that is not already publicly available, when such disclosure of information is determined by the Secretary to be in the national interest. Any determination under this paragraph (d) may not be delegated below the level of the Assistant Secretary of the Treasury.

(e) The Department of the Treasury may use the information gathered pursuant to this part to fulfill its obligations under the Order, which may include publication of anonymized data.

§ 850.802 Language of information.

All materials or information filed with the Department of the Treasury under this part shall be submitted in English. If supplementary or additional materials were originally written in a foreign language, they shall be submitted in their original language. Where English versions of those documents exist, they shall also be submitted.

Subpart I—Other Provisions

§ 850.901 Delegation of authorities of the Secretary of the Treasury.

Any action that the Secretary is authorized to take pursuant to the Order and any further executive orders relating to the national emergency declared in the Order may be taken by the Assistant Secretary of the Treasury for Investment Security or their designee or by any other person to whom the Secretary has delegated the authority so to act, as appropriate.

§ 850.902 Amendment, modification, or revocation.

(a) Except as otherwise provided by law, and in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, the Secretary may amend, modify, or revoke provisions of this part at any time.

(b) Except as otherwise provided by law, any instructions, orders, forms, regulations, or rulings issued pursuant to this part may be amended, modified, or revoked at any time.

(c) Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or

revocation. All penalties, forfeitures, and liabilities under any such instructions, orders, forms, regulations, or rulings pursuant to this part continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 850.903 Severability.

The provisions of this part are separate and severable from one another. If any of the provisions of this part, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

§ 850.904 Reports to be furnished on demand.

(a) Any person is required to furnish under oath, in the form of reports or otherwise, at any time as may be required by the Department of the Treasury, complete information regarding any act or transaction subject to the provisions of this part, regardless of whether such act or transaction is effected pursuant to a national interest exemption under § 850.502. Except as provided otherwise, the Department of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of any books, contracts, letters, papers, and other hard copy or electronic documents relating to any matter under

investigation, regardless of whether any report has been required or filed under this section.

(b) For purposes of paragraph (a) of this section, the term *document* includes any written, recorded, or graphic matter or other means of preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly.

(c) Persons providing documents to the Department of the Treasury pursuant to this section must do so in a usable format agreed upon by the Department of the Treasury.

Paul M. Rosen,

Assistant Secretary for Investment Security.

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Part III

Federal Trade Commission

16 CFR Part 425

Negative Option Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 425

RIN 3084-AB60

Negative Option Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) issues final amendments to the Commission’s trade regulation “Rule Concerning Use of Prenotification Negative Option Plans,” retitled the “Rule Concerning Recurring Subscriptions and Other Negative Option Programs” (“Rule,” “final Rule” or “Negative Option Rule”). The final Rule now applies to all negative option programs in any media. This document also contains the text of the final Rule, the Rule’s Statement of Basis and Purpose (“SBP”), and a final regulatory analysis.

DATES:

Effective date: This rule is effective January 14, 2025.

Compliance date: Regulated entities have until May 14, 2025 to comply with §§ 425.4 through 425.6.

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at <https://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Katherine Johnson, Attorney, (202) 326-2185, kjohnson3@ftc.gov, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:**I. Overview**

The Commission commenced this proceeding because it had reason to believe unfair and deceptive negative option practices are widespread in the marketplace. Negative option programs can provide substantial benefits for sellers and consumers. However, consumers cannot realize these benefits when sellers make material misrepresentations to induce consumers to enroll in such programs, fail to provide important information, bill consumers without their consent, or make cancellation difficult or impossible. Unfair and deceptive negative option practices have been a persistent source of consumer harm for decades, saddling shoppers with recurring payments for products and services they never intended to purchase nor wanted to continue buying. In the past, the Commission

sought to address these practices through individual law enforcement actions and a patchwork of laws and regulations. Nevertheless, problems persist, as demonstrated by both a steady stream of State and Federal law enforcement actions and thousands of consumer complaints each year. To address these practices, the Commission proposed amending the current Negative Option Rule to establish clear, enforceable performance-based requirements for all negative option features in all media. The Commission solicited comments first in an advance notice of proposed rulemaking (“ANPR”) and then on proposed amendments in a notice of proposed rulemaking (“NPRM”). The Commission designed these amendments to ensure consumers understand what they are purchasing and allow them to cancel their participation without undue burden.

Among other things, this final Rule (1) prohibits misrepresentations of any material fact made while marketing using negative option features; (2) requires sellers to provide important information prior to obtaining consumers’ billing information and charging consumers; (3) requires sellers to obtain consumers’ unambiguously affirmative consent to the negative option feature prior to charging them; and (4) requires sellers to provide consumers with simple cancellation mechanisms to immediately halt all recurring charges.

The Commission now promulgates a final Rule. Pursuant to 15 U.S.C. 57a(a)(1)(B), the Rule, *inter alia*, defines the following acts and practices as unfair or deceptive within the meaning of section 5 of the FTC Act:

- to misrepresent any material fact made while marketing using a negative option feature (§ 425.3);
- to fail to clearly and conspicuously disclose material terms prior to obtaining a consumer’s billing information in connection with a negative option feature (§ 425.4);
- to fail to obtain a consumer’s express informed consent to the negative option feature before charging the consumer (§ 425.5); and
- to fail to provide a simple mechanism to cancel the negative option feature and immediately halt charges (§ 425.6).

Further, the Rule, consistent with the final sentence of 15 U.S.C. 57a(a)(1)(B) includes requirements prescribed for the purpose of preventing such acts or practices.

The final Rule differs from the proposed Rule in two significant ways. First, the proposed Rule would have

required sellers to provide annual reminders to consumers of the negative option feature. Second, the proposed Rule would have prohibited sellers from forcing consumers to receive saves¹ without first obtaining consumers’ unambiguously affirmative consent. The Commission has considered comments both supporting and opposing these proposed provisions. As explained in the section-by-section analysis, the Commission declines to adopt these provisions of the proposed Rule at this time. Instead, the Commission plans to seek further comment through a supplemental NPRM (“SNPRM”), and therefore, keeps the record open on these issues.²

Finally, in response to the comments, the Commission adds two definitions and two provisions to the final Rule for clarity. The final Rule explicitly defines the terms “material” and “interactive electronic medium” consistent with how they were defined and discussed in the NPRM. Additionally, the final Rule includes a severability provision and a provision allowing requests for exemptions from the final Rule consistent with the Commission’s Rules of Practice.³

II. Background*A. Statutory Authority*

The Commission promulgates the final Negative Option Rule, 16 CFR part 425 pursuant to section 18 of the FTC Act, 15 U.S.C. 57a, the Administrative Procedure Act (“APA”), 5 U.S.C. 533; and part 1, subpart B of the Commission’s Rules of Practice, 16 CFR 1.7–1.20. Section 18 permits the Commission to promulgate, amend, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1); and allows the Commission to prescribe requirements for the purpose of preventing these unfair or deceptive acts and practices.

*B. Negative Option Marketing***1. Negative Option Programs**

Negative option programs come in a variety of forms, but all share a central feature: each contain a term or condition that allows a seller to interpret a customer’s silence, or failure to take an

¹ Save was defined in the proposed Rule to mean an attempt by a seller to present any additional offers, modifications to the existing agreement, reasons to retain the existing offer, or similar information when a consumer attempts to cancel a negative option feature. Proposed Rule § 425.2(f).

² See 16 CFR 1.11 (“Commission’s Rules of Practice” or “Commission Rules”); *cf.* Impersonation Rule, 89 FR 15072 (Feb. 29, 2024).

³ See 16 CFR 1.16.

affirmative action, as acceptance of an offer.⁴ Negative option programs generally fall into four categories: prenotification plans, continuity plans, automatic renewals, and free trial (*i.e.*, free-to-pay or nominal-fee-to-pay) conversion offers.

Prenotification plans are the only negative option practice currently covered by the Commission's current Negative Option Rule, originally promulgated in 1973. Under such plans (*e.g.*, book-of-the-month clubs), sellers provide periodic notices offering goods to participating consumers and then send—and charge for—those goods only if the consumers take no action to decline the offer. The periodic announcements and shipments can continue indefinitely. In continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services (*e.g.*, bottled water delivery), which they continue to receive until they cancel the agreement. In automatic renewals, sellers (*e.g.*, a magazine publisher, credit monitoring service provider, etc.) automatically renew consumers' subscriptions when they expire, unless consumers affirmatively cancel the subscriptions. Finally, in free-to-pay plans, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.

Some negative option offers include upsell or bundled offers, where sellers use consumers' billing data to sell additional products from the same seller or pass consumers' billing data to a third party for their sales. An upsell occurs, *e.g.*, when a consumer completes a first transaction and then receives a second solicitation for an additional product or service. A bundled offer occurs, *e.g.*, when a seller packages two or more products or services together.

Importantly, negative option programs are distinct from other continuing agreements such as installment contracts. In an installment contract, consumers are obligated for the entire contractual period for the entire contract. A prime example of this type of transaction is a contract for purchasing a vehicle, which outlines terms, such as price, interest rate, and

payment schedule. The contract thus allows the consumer to pay the purchase price of the vehicle over time. Consumers' failure to pay amounts due under an installment agreement may bring the total balance due, and may trigger halting performance, or provide the seller with other contractual rights.

A negative option, in contrast, merely determines whether a seller may continue to send, and charge for, goods or provide services without the consumer's further action. Notably, a contract could have both installment and negative option features. Take, for instance, a software license agreement. A consumer may purchase a software license for a year, in which the consumer is obligated for the entire year, payable monthly, to renew automatically at the conclusion of the year unless the consumer cancels the agreement.⁵ Canceling the agreement during the first year does not void a consumer's obligation to pay for the whole first year, but it does terminate the consumer's responsibility for the next year.

2. Prevalence of Deceptive or Unfair Negative Option Acts and Practices

Negative option programs are widespread in the marketplace and can provide substantial benefits for sellers and consumers. For businesses, the benefits of negative option marketing include “greater revenue predictability, customer base continuity, and the ability to better plan in advance.”⁶ For consumers, such benefits may include opportunities to explore new products prior to purchase (*e.g.*, free trials),⁷ broader selections at lower prices and transaction costs,⁸ and the convenience of uninterrupted products or services.⁹ However, consumers cannot reap these benefits when marketers misrepresent

material facts, fail to make adequate disclosures, bill consumers without their consent, or make cancellation difficult or impossible. Over the years, such problematic practices have remained a persistent source of consumer harm, saddling consumers with recurring payments for products and services they never intended to purchase nor wanted to continue buying.

The Commission tried to address these practices through individual law enforcement cases and a patchwork of regulations (*see* discussion at sections III–IV). Nevertheless, problems persist, as demonstrated in part by the tens of thousands of complaints consumers submit about these practices to the FTC each year. Moreover, the Commission and States continue to regularly bring cases challenging harmful negative option practices, including more than 35 recent FTC cases.¹⁰ These matters involved a range of deceptive or unfair practices, including inadequate disclosures for “free” offers and other products or services, enrollment without consumer consent, and inadequate or overly burdensome cancellation and refund procedures.¹¹ As discussed further below, the continuing stream of cases; the high volume of ongoing complaints; and comments on the record all demonstrate prevalent unfair and deceptive practices and unabated consumer harm.

III. The FTC'S Existing Regulatory Scheme

A. The FTC's Current Negative Option Rule

The Commission first promulgated the Rule in 1973 pursuant to the FTC Act, 15 U.S.C. 41 *et seq.*, finding some negative option marketers committed

⁵ *See, e.g., United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024).

⁶ News/Media Alliance (“N/MA”), FTC–2023–0033–0873; *see also* Association of National Advertisers (“ANA”), FTC–2023–0033–1001; National Retail Federation (“NRF”), FTC–2023–0033–1005. Citations herein to comments are cited as the name of commenter and unique identifier (*e.g.*, FTC–2023–0033–____). Comments are available online at [regulations.gov](https://www.regulations.gov/document/FTC-2023-0033-0001), Negative Option Rule (NPRM), FTC–2023–0033–0001, <https://www.regulations.gov/document/FTC-2023-0033-0001>.

⁷ N/MA, FTC–2023–0033–0873; Sirius XM Radio Inc. (“Sirius XM”), FTC–2023–0033–0857; NCTA—The Internet & Television Association (“NCTA”), FTC–2023–0033–0858; Interactive Advertising Bureau (“IAB”), FTC–2023–0033–1000.

⁸ *See* IAB, FTC–2023–0033–1000; Sirius XM, FTC–2023–0033–0857; Joint Comment from Entertainment Software Association, Digital Media Association, and Motion Picture Association (“ESA”), FTC–2023–0033–0867.

⁹ N/MA, FTC–2023–0033–0873; NRF, FTC–2023–0033–1005; ANA, FTC–2023–0033–1001.

¹⁰ *See, e.g., FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024); *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024); *FTC v. WealthPress, Inc.*, No. 3:23-cv-00046 (M.D. Fla. 2023); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023); *FTC v. Amazon.com, Inc.*, No. 2:23-cv-0932 (W.D. Wash. 2023); *see also* n.60.

¹¹ *E.g., FTC v. Triangle Media Corp.*, No. 3:18-cv-01388 (S.D. Cal. 2018); *FTC v. Credit Bureau Ctr., LLC*, No. 1:17-cv-00194 (N.D. Ill. 2017); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014); *FTC v. One Techs., LP*, No. 3:14-cv-05066 (N.D. Cal. 2014); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014); *FTC v. NutraClick, LLC*, No. 2:16-cv-06819 (C.D. Cal. 2016); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. AAFE Prods. Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Pact, Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186 (S.D. Fla. 2016); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015); *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017).

⁴ The Commission's Telemarketing Sales Rule defines a negative option feature as a provision in an offer or agreement to sell or provide any goods or services “under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.” 16 CFR 310.2(w).

unfair and deceptive practices that violated section 5 of the Act, 15 U.S.C. 45. Based on practices at the time, however, the Rule only applied to prenotification plans for the sale of goods, and therefore, does not reach the vast majority of modern negative option programs.¹²

Specifically, the Rule required prenotification plan sellers to disclose their plans' material terms clearly and conspicuously before consumers subscribe. To do so, it required sellers to disclose seven material terms: (1) how subscribers must notify the seller if they do not wish to purchase the selection; (2) any minimum purchase obligations; (3) the subscribers' right to cancel; (4) whether billing charges include postage and handling; (5) that subscribers have at least ten days to reject a selection; (6) that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and (7) the frequency with which announcements and forms will be sent.¹³ In addition, sellers had to disclose the specific periods during which they would send introductory merchandise, give consumers a specified period to respond to announcements, provide instructions for rejecting merchandise in announcements, and promptly honor written cancellation requests.¹⁴

B. Other Current Regulatory Requirements

Several other statutes and regulations also address harmful negative option practices. First, section 5 of the FTC Act has served as the Commission's primary mechanism for addressing deceptive negative option claims. Additionally, the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. 8401–8405, the Telemarketing Sales Rule ("TSR"), 16 CFR part 310, the Postal Reorganization Act (*i.e.*, the Unordered Merchandise Statute), 39 U.S.C. 3009, and the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693–1693r, all address various aspects of negative option marketing. ROSCA, however, is the only law primarily designed to do so, but only for online transactions.

¹² The Rule defines "negative option plan" narrowly to apply only to prenotification plans. 16 CFR 425.1(c)(1). In 1998, the Commission clarified the Rule's application to such plans in all media, stating that it "covers all promotional materials that contain a means for consumers to subscribe to prenotification negative option plans, including those that are disseminated through newer technologies." 63 FR 44555, 44561 (Aug. 20, 1998).

¹³ 16 CFR 425.1(a)(1)(i)–(vii).

¹⁴ 16 CFR 425.1(a)(2) and (3); *id.* 425.1(b).

1. Section 5 of the FTC Act

Section 5(a) of the FTC Act, 15 U.S.C. 45(a), is the core consumer protection statute enforced by the Commission. That statute broadly prohibits "unfair or deceptive acts or practices" but does not specifically address negative option marketing.¹⁵ Therefore, in guidance and cases, the FTC has highlighted six basic requirements negative option marketing must follow to avoid deceptive and unfair practices.¹⁶ First, marketers must disclose the material terms of a negative option offer including, at a minimum: the existence of the negative option offer; the offer's total cost; the transfer of a consumer's billing information to a third party, if applicable; and how to cancel the offer. Second, section 5 requires these disclosures to be clear and conspicuous. Third, sellers must disclose the material terms of the negative option offer before consumers agree to the purchase. Fourth, marketers must obtain consumers' consent to such offers. Fifth, marketers must not impede the effective operation of promised cancellation procedures and must honor cancellation requests that comply with those procedures. Finally, marketers cannot make any material

¹⁵ Under the FTC Act, "unfair or deceptive acts or practices" include acts or practices involving foreign commerce that cause or are likely to cause reasonably foreseeable injury within the United States or involve material conduct occurring within the United States. 15 U.S.C. 45(a)(4)(A). Section 5(n) of the FTC Act provides that "unfair" practices are those that cause or are likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. 45(n).

¹⁶ See *Negative Options: A Report by the Staff of the FTC's Division of Enforcement*, 26–29 (Jan. 2009) ("Staff Report"), <https://www.ftc.gov/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff>. In discussing the principal Section 5 requirements related to negative options, the report cites the following pre-ROSCA cases, *FTC v. JAB Ventures, LLC*, No. 2:08-cv-04648 (C.D. Cal. 2008); *FTC v. Complete Weightloss Ctr.*, No. 1:08-cv-00053 (D.N.D. 2008); *FTC v. Berkeley Premium Nutraceuticals*, No. 1:06-cv-00051 (S.D. Ohio 2006); *FTC v. Think All Publ'g, LLC*, No. 4:07-cv-00011 (E.D. Tex. 2006); *FTC v. Hispanexo, Inc.*, No. 1:06-cv-424 (E.D. Va. 2006); *FTC v. Consumerinfo.com*, No. 8:05-cv-00801 (C.D. Cal. 2005); *FTC v. Conversion Mktg.*, No. 8:04-cv-01264 (C.D. Cal. 2004); *United States v. Mantra Films, Inc.*, No. 2:03-cv-9184 (C.D. Cal. 2003); *FTC v. Preferred Alliance, Inc.*, No. 1:03-cv-0405 (N.D. Ga. 2003); *United States v. Prochnow*, No. 1:02-cv-917 (N.D. Ga. 2002); *FTC v. Ultralife Fitness, Inc.*, No. 2:08-cv-07655 (C.D. Cal. 2008); *In re America Isuzu Motors*, FTC Docket No. C-3712 (1996); *FTC v. Universal Premium Servs.*, No. 2:06-cv-00849 (C.D. Cal. 2006); *FTC v. Remote Response Corp.*, No. 1:06-cv-20168 (S.D. Fla. 2006). The report also cited the FTC's previously issued guidance, *Dot Com Disclosures* (2002), archived at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-issues-guidelines-internet-advertising/0005dotcomstaffreport.pdf>. See also nn.245–252.

misrepresentation regarding any portion of the transaction.

In addition to these deception-based requirements, the Commission has repeatedly stated billing consumers without consumers' express informed consent is an unfair act under the FTC Act.¹⁷

2. ROSCA

Enacted by Congress in 2010 to address, in part, ongoing problems with online negative option marketing, ROSCA contains general provisions related to disclosures, consent, and cancellation.¹⁸ Specifically, ROSCA prohibits charging or attempting to charge consumers for goods or services sold on the internet through any negative option feature unless the marketer: (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information, regardless of whether a material term directly relates to the terms of the negative option offer; ¹⁹ (2) obtains a consumer's express informed consent before charging the consumer's account; and (3) provides simple mechanisms for the consumer to stop recurring charges.²⁰ ROSCA, however, does not prescribe specific steps marketers must follow to comply with these provisions and is limited to online transactions.

Furthermore, pursuant to the statute, a violation of ROSCA is treated as a violation of a Commission trade regulation rule under section 18 of the FTC Act.²¹ Thus, the Commission may seek a variety of remedies for violations of ROSCA, including civil penalties under section 5(m)(1)(A) of the FTC Act;²² injunctive relief under section 13(b) of the FTC Act;²³ and consumer redress, damages, and other relief under section 19 of the FTC Act.²⁴

3. Telemarketing Sales Rule

The TSR prohibits deceptive telemarketing acts or practices,

¹⁷ Courts have found unauthorized billing to be unfair under the FTC Act. See, e.g., *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1157–59 (9th Cir. 2010), amended by 2010 WL 2365956 (9th Cir. June 15, 2010); *FTC v. Amazon.com, Inc.*, No. 2:14-cv-1038, 2016 WL 10654030, at *8 (W.D. Wash. Apr. 26, 2016); *FTC v. Ideal Fin. Sols., Inc.*, No. 2:13-cv-00143, 2015 WL 4032103, at *8 (D. Nev. June 30, 2015).

¹⁸ 15 U.S.C. 8401–8405.

¹⁹ ROSCA, 15 U.S.C. 8403(1); see also *In re MoviePass, Inc.*, FTC Docket No. C-4751 (2021).

²⁰ 15 U.S.C. 8403. ROSCA incorporates the definition of "negative option feature" from the TSR, 16 CFR 310.2(w).

²¹ 15 U.S.C. 8404 (citing section 18 of the FTC Act, 15 U.S.C. 57a).

²² 15 U.S.C. 45(m)(1)(A).

²³ 15 U.S.C. 53(b).

²⁴ 15 U.S.C. 57b(a)(1), (b).

including those involving negative option offers, and certain types of payment methods common in deceptive negative option marketing. Specifically, the TSR requires telemarketers to disclose all material terms and conditions of the negative option feature, including the need for affirmative consumer action to avoid the charges, the date (or dates) the charges will be submitted for payment, and the specific steps the customer must take to avoid the charges. It also prohibits telemarketers from misrepresenting such information and contains specific requirements related to payment authorization.²⁵ The TSR, however, only applies to negative option offers made over the telephone.

4. Other Relevant Requirements

EFTA²⁶ and the Unordered Merchandise Statute²⁷ also contain provisions relevant to unfair and deceptive negative option marketing. EFTA prohibits sellers from imposing recurring charges on a consumer's debit cards or bank accounts without written authorization.²⁸ The Unordered Merchandise Statute provides that mailing unordered merchandise, or a bill for such merchandise, constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the FTC Act.²⁹

IV. Limitations of Existing Regulatory Requirements

The existing patchwork of laws and regulations does not provide industry and consumers with a consistent legal framework across media and offers. For instance, as discussed above, the current Rule does not cover common practices such as continuity plans, automatic renewals, and free-to-pay conversions.³⁰ In addition, ROSCA and the TSR do not

address negative option programs in all media. Yet, harmful negative option practices that fall outside of ROSCA and the TSR's coverage still occur.³¹

Additionally, ROSCA lacks specificity about cancellation procedures and the placement, content, and timing of cancellation-related disclosures. Instead, the statute requires marketers to provide "simple mechanisms" for the consumer to stop recurring charges without guidance about what is simple. While the statute provides more than adequate specificity to avoid blatant violations, it makes law enforcement actions much more difficult for closer calls, even when these practices cause significant harm.

V. Negative Option Rulemaking and Enforcement Efforts

The Commission initiated its last regulatory review of the Negative Option Rule in 2009,³² following a 2007 FTC workshop and subsequent Staff Report.³³ The Commission completed the review in 2014.³⁴ At the time, the Commission found the comments supporting the Rule's expansion "argue convincingly that unfair, deceptive, and otherwise problematic negative option marketing practices continue to cause substantial consumer injury, despite determined enforcement efforts by the Commission and other law enforcement agencies."³⁵ It also noted practices not covered by the Rule (e.g., trial conversions and continuity plans) accounted for most of the Commission's enforcement activity in this area. Nevertheless, the Commission declined

to expand or modify the Rule because the enforcement tools provided by the TSR and, especially, ROSCA, which had only recently become effective, might prove adequate to address the extant problems. The Commission emphasized, however, if ROSCA and its other enforcement tools failed to protect consumers, the Commission would consider whether and how to amend the Rule.³⁶ Since that review, the problems with negative options have persisted.³⁷

VI. Rule Review and Request for Comment

A. 2019 Advance Notice of Proposed Rulemaking

Given the persistence of unfair and deceptive practices despite significant law enforcement attention at both the Federal and State level, the Commission published its 2019 advance notice of proposed rulemaking ("ANPR") seeking comments on the current Rule, as well as possible new measures to reduce consumer harm created by deceptive or unfair negative option marketing.³⁸ Specifically, the Commission sought comment on various alternatives, including amendments to existing rules to further address disclosures, consumer consent, and cancellation. The Commission also requested input on whether and how it should use its authority under section 18 of the FTC Act to expand the Negative Option Rule to address prevalent unfair or deceptive practices involving negative option marketing.³⁹ In response, the Commission received 17 comments.⁴⁰

B. 2021 Enforcement Policy Statement

On November 4, 2021, the Commission published an "Enforcement Policy Statement Regarding Negative Option Marketing" ("2021 Enforcement Policy Statement" or "EPS") to provide guidance regarding its enforcement of

³¹ See, e.g., *In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022); *FTC v. Nobetes Corp.*, No. 2:18-cv-10068 (C.D. Cal. 2018); *FTC v. Dill*, No. 2:16-cv-00023 (D. Me. 2016); *FTC v. Shopper Sys., LLC*, No. 1:12-cv-23919 (S.D. Fla. 2012); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Health Rsch. Labs., LLC*, No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Mktg. Architects*, No. 2:18-cv-00050 (D. Me. 2018); see also Individual commenter, FTC-2023-0033-0007 (discussing deceptive and unfair negative option practices for in-person enrollment); Individual commenter, FTC-2023-0033-0129 (gym membership in-person enrollment); Individual commenter, FTC-2023-0033-0299 (same).

³² 74 FR 22720 (May 14, 2009).

³³ See Staff Report, n.16.

³⁴ 79 FR 44271 (July 31, 2014).

³⁵ 79 FR 44275. The Commission cited a number of its law enforcement actions challenging negative option marketing practices, including, for example, *FTC v. Process Am., Inc.*, No. 2:14-cv-00386 (C.D. Cal. 2014) (processing of unauthorized charges relating to negative option marketing); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011) (internet free trials and continuity plans); *FTC v. MoneyMaker*, No. 2:11-cv-00461 (D. Nev. 2011) (internet trial offers and continuity programs); *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. 2010) (internet trial offers); and *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-cv-04719 (C.D. Cal. 2009) (infomercial and telemarketing trial offers and continuity programs).

³⁶ 79 FR 44275-76.

³⁷ See sections VI-VII of this SBP.

³⁸ ANPR, 84 FR 52393 (Oct. 2, 2019).

³⁹ Section 18 of the FTC Act authorizes the Commission to promulgate rules that define with specificity acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(1)(B). The Commission may issue regulations "where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent." 15 U.S.C. 57a(b)(3). The Commission may make such a prevalence finding if it has issued cease and desist orders regarding such acts or practices, or any other available information indicates a widespread pattern of unfair or deceptive acts or practices. Rules under section 18 "may include requirements prescribed for the purpose of preventing such acts or practices."

⁴⁰ The comments are available online. See [Regulations.gov](https://www.regulations.gov), Negative Option Rule (ANPR), FTC-2019-0082, <https://www.regulations.gov/docket/FTC-2019-0082>.

²⁵ 16 CFR 310.3(a).

²⁶ 15 U.S.C. 1693-1693r.

²⁷ 39 U.S.C. 3009.

²⁸ EFTA provides that the Commission shall enforce its requirements, except to the extent that enforcement is specifically committed to some other Federal government agency, and that a violation of any of its requirements shall be deemed a violation of the FTC Act. Accordingly, the Commission has authority to seek injunctive relief for EFTA violations, just as it can seek injunctive relief for other section 5 violations.

²⁹ The Commission has authority to seek the same remedies for violations of the Unordered Merchandise Statute that it can seek for other section 5 violations. The Commission can seek civil penalties pursuant to section 5(m)(1)(B) of the FTC Act from violators who have actual knowledge that the Commission has found mailing unordered merchandise unfair. 15 U.S.C. 45(m)(1)(B).

³⁰ Indeed, the prenotification plans covered by the Rule represent only a small fraction of negative option marketing. In 2017, for instance, the Commission estimated that fewer than 100 sellers ("clubs") were subject to the current Rule's requirements. 82 FR 38907, 38908 (Aug. 16, 2017).

various statutes and FTC regulations.⁴¹ The 2021 Enforcement Policy Statement enunciated various principles rooted in FTC case law and restated previous guidance related to the provision of information to consumers, consent, and cancellations. Among these principles, the Statement emphasized ROSCA's requirement that sellers disclose all material terms related to the underlying product or service that are necessary to prevent deception, regardless of whether that term relates directly to the terms of the negative option offer.⁴² In addition, consistent with ROSCA, judicial decisions applying section 5, and cases brought by the Commission, the 2021 Enforcement Policy Statement reiterated sellers should obtain consumers' acceptance of the negative option feature separately from any other portion of the transaction. Finally, the Statement explained sellers should provide cancellation mechanisms at least as easy to use as the method the consumer employed to initiate the negative option feature.

C. 2023 Notice of Proposed Rulemaking

After reviewing the comments received in response to the ANPR and issuing the 2021 Enforcement Policy Statement, the Commission issued a notice of proposed rulemaking ("NPRM") on April 23, 2023 (88 FR 24716). In the NPRM, the Commission proposed amending the existing Rule to prohibit material misrepresentations and to require sellers to provide important information to consumers, obtain consumers' express informed consent, and ensure consumers can easily cancel negative option programs if they choose. All these proposed changes would be applicable to all forms of negative option marketing across all media (e.g., telephone, internet, traditional print media, and in-person transactions).⁴³

The Commission designed the proposed amendments to curb deceptive or unfair practices occurring in negative option marketing. The Commission sought public comment on "all aspects" of the proposal, "including the likely effectiveness of the proposed Rule in helping the Commission combat unfair or deceptive practices in negative option marketing."⁴⁴ The Commission further identified specific questions and areas where it solicited available data and evidence, including data and evidence supporting alternatives to the proposed regulations.⁴⁵ The Commission did not identify any disputed issues of material fact that needed to be resolved at an informal hearing.⁴⁶ The comment period closed on June 23, 2023.

In response, the Commission received more than 16,000 comments, and published the 1,162 unique comments from stakeholders representing a wide range of viewpoints.⁴⁷ Although some commenters raised concerns and recommended specific modifications or additions to the proposed Rule (some of which the Commission adopts as

Federation ("NRF"), FTC-2023-0033-1005). Second, they argued the Commission's proposed Rule did not satisfy the specificity and prevalence requirements of section 18. The Commission addresses these comments in section VII.A.

⁴⁴ NPRM, 88 FR 24730.

⁴⁵ See NPRM, 88 FR 24728 (inviting comments on free trials); *id.* at 24729 (requesting comments on proposed annual reminder provision); *id.* at 24730 (inviting comments on conflicts with existing state requirements); *id.* (seeking comments on proposed material changes provision and exempted activities or entities); *id.* (inviting submissions of "data, views, and arguments on the proposed amendments"); *id.* at 24732-33 (inviting comments on the impacts on small businesses, including any modifications to reduce costs or burdens for small entities); *id.* at 24734 (inviting comments on the Paperwork Reduction Act analysis). See also *id.* at 24730 (NPRM section XIII, Request for Comments).

⁴⁶ See 16 CFR 1.11(e).

⁴⁷ Unique public comments to the NPRM are available online. See [regulations.gov](https://www.regulations.gov), Negative Option Rule (NPRM), FTC-2023-0033-0001, <https://www.regulations.gov/document/FTC-2023-0033-0001>. The Commission published 1,162 unique comments. As explained at [regulations.gov](https://www.regulations.gov), agencies may withhold duplicate/near duplicate examples of a mass-mail campaign. See Gen. Servs. Admin., [Regulations.gov](https://www.regulations.gov) Frequently Asked Questions, Find Dockets, Documents, and Comments FAQs, "How are comments counted and posted to [Regulations.gov](https://www.regulations.gov)?" <https://www.regulations.gov/faq>. The Commission cannot quantify the number of individuals or entities represented by the comments. The number of comments undercounts the number of individuals or entities represented by the comments because many comments, including those from different types of organizations, jointly represent the opinions or interests of many. Overall, the Commission received 16,612 comments. Of those, 15,449 were not posted online for various reasons (i.e., 14 unrelated, 23 duplicates, and 15,412 that appear to be non-unique responses to mass media campaigns) and one comment was withdrawn. The Commission has considered all timely and responsive public comments it received in response to its NPRM.

discussed herein), the majority generally supported the Rule. The Commission discusses these comments in section VII below.

D. Informal Hearing and Recommended Decision

Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, and the Commission's Rules of Practice, 16 CFR 1.11(e),⁴⁸ provide interested persons the opportunity to make an oral statement at an informal hearing upon request.⁴⁹ The Commission received six⁵⁰ such requests. Additionally, although the Commission did not designate any disputed issues of material fact in the NPRM, two interested commenters, IAB and NCTA, proposed the Commission consider several potential disputed issues of material fact.⁵¹

On December 8, 2023, the Commission published an Initial Notice of Informal Hearing (88 FR 85525, "Hearing Notice"). The Hearing Notice designated the Honorable Carol Fox Foelak, Administrative Law Judge for the Securities Exchange Commission, to serve as the presiding officer of the informal hearing and scheduled the informal hearing for January 16, 2024. In the Hearing Notice, the Commission again did not designate any disputed issues of material fact, finding the issues raised by IAB and NCTA did not need to be resolved at the informal hearing through cross-examination.⁵²

On January 16, 2024, Judge Foelak commenced the informal hearing, at which IAB, NCTA, Performance Driven Marketing Institute ("PDMI"), TechFreedom, and the International Franchise Association ("IFA") appeared and made oral submissions subject to cross-examination.⁵³ Included in their oral and written submissions, IAB and

⁴⁸ The FTC Act provides that "an interested person is entitled to present his position orally or by documentary submission (or both)." 15 U.S.C. 57a(c)(2)(A).

⁴⁹ 16 CFR 1.11(e).

⁵⁰ The six requesters were (1) International Franchise Association; (2) TechFreedom; (3) Performance Driven Marketing Institute; (4) NCTA—The Internet & Television Association; (5) Frontdoor; and (6) Interactive Advertising Bureau. All but one—TechFreedom—identified their interest in the proceeding either as industry groups or private companies.

⁵¹ See Notice of Informal Hearing ("Hearing Notice"), 88 FR 85525, 85526 (Dec. 8, 2023).

⁵² 88 FR 85526-27.

⁵³ The Hearing Notice also allowed interested persons to make additional written submissions. The following interested parties timely filed additional written submissions on December 22, 2023: (1) BSA—The Software Alliance; (2) PDMI; (3) U.S. Chamber of Commerce; (4) IAB; (5) NCTA; and two individuals. All filings related to the Hearing Notice are available online at [regulations.gov](https://www.regulations.gov/document/FTC-2023-0073-0001) at <https://www.regulations.gov/document/FTC-2023-0073-0001>.

⁴¹ EPS, 86 FR 60822 (Nov. 4, 2021).

⁴² The Commission recently alleged a negative option seller's failure to disclose it was impeding access to its movie subscription service violates ROSCA. *In re MoviePass, Inc.*, FTC Docket No. C-4751 (2021).

⁴³ The Commission proposed to issue such amendments pursuant to section 18 of the FTC Act, which authorizes it to promulgate rules specifying acts or practices in or affecting commerce which are unfair or deceptive. 15 U.S.C. 57a(a)(1)(B). Several commenters raised concerns the Commission failed to follow section 18's procedures for two reasons. First, commenters argued the Commission's proposed Rule went beyond the scope of the ANPR. See, e.g., ESA, FTC-2023-0033-0867; USTelecom—The Broadband Association ("USTelecom"), FTC-2023-0033-0876; Retail Industry Leaders Association ("RILA"), FTC-2023-0033-0883; U.S. Chamber of Commerce ("Chamber"), FTC-2023-0033-0885; The Computer & Communications Industry Association ("CCIA"), FTC-2023-0033-0984; IAB, FTC-2023-0033-1000; National Retail

NCTA renewed their requests to have the presiding officer designate disputed issues of material fact.⁵⁴ Following the hearing, Judge Foelak designated two disputed issues: (1) will the proposed rule have an annual effect on the national economy of \$100 million or more?; and (2) what will the recordkeeping and disclosure costs associated with the proposed rule be? Judge Foelak held subsequent hearings on January 31, 2024, and February 14, 2024. She allowed post-hearing briefs filed by February 22, and February 28, 2024, respectively, and issued her recommended decision on April 12, 2024. Based on the evidence, the presiding officer found: (1) the proposed Rule will have an annual effect on the national economy of \$100 million or more; and (2) there is insufficient evidence to make a finding regarding the size of the recordkeeping and disclosure costs associated with the proposed Rule.⁵⁵

VII. Discussion of Final Rule

A. Legal Standard for Promulgating the Final Rule

As explained above in section II, the Commission promulgates the final Rule, 16 CFR part 425, pursuant to section 18 of the FTC Act, also known as Magnuson-Moss rulemaking (“Magnuson-Moss”). Under section 18 and the Commission Rules,⁵⁶ to promulgate a rule the Commission must: (1) issue a SBP with statements detailing: (a) the prevalence of the acts or practices treated by the rule; (b) the manner and context in which such acts or practices are unfair or deceptive; and (c) the economic effect of the rule, taking into account the effect on small business and consumers; and (2) “define with specificity acts or practices which are unfair or deceptive.” The Commission addresses these requirements in part A.1–2. In part A.3, the Commission addresses additional legal issues, including the ANPR’s scope and the “major questions” doctrine.

1. Statements Required Under Section 18(d) of the FTC Act

(a) Statement Regarding Prevalence of the Acts and Practices Treated by the Rule

Under the Magnuson-Moss statute, the Commission may promulgate rules if

it “has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.”⁵⁷ An act or practice is “prevalent” if the FTC has previously issued cease and desist orders regarding the act or practice, or if “any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.”⁵⁸ Based on the rulemaking record, the Commission has more than sufficient reason to believe unfair or deceptive acts and practices in the negative option marketplace are prevalent. These practices include: (1) material misrepresentations made while marketing using negative option features to induce consumers to enter into negative option programs; (2) failure to provide important information about material terms prior to billing consumers; (3) lack of informed consumer consent; and (4) failure to provide consumers with a simple cancellation method, including failure to honor cancellation requests, refusal to provide refunds to consumers who unknowingly enrolled in programs, denying consumers refunds, forcing them to pay to return the unordered goods, requiring consumers to cancel using a more difficult method than the one used to sign up for the program, and forcing consumers to contend with multiple upsells before allowing cancellation.⁵⁹ These practices cause consumer harm by luring consumers into purchasing goods and services they do not want, or ensnaring consumers into unwanted recurring payments that are difficult or impossible to cancel.

The Commission relies on substantial evidence in the record showing a widespread pattern of unfair or deceptive conduct in the negative option marketplace. This evidence generally falls into three categories: State, private, and Federal actions (including administrative and Federal court FTC law enforcement actions); consumer complaints and comments; and studies. The Commission discusses each in turn below.

Federal, State, and Private Actions. As discussed in the ANPR and NPRM, the volume of enforcement efforts in recent years seeking to stem illegal negative option marketing is significant. These matters involve a range of deceptive and unfair practices, including: failure to adequately disclose the existence of negative options,

including after the expiration of free trials; enrollment without consumer consent; and inadequate or unnecessarily burdensome cancellation and refund procedures. The FTC itself has brought at least 35 such cases in the years since ROSCA was enacted.⁶⁰ The Consumer Financial Protection Bureau (“CFPB”) also has brought many of its own negative option cases.⁶¹ Truth in Advertising, Inc. (“TINA”),⁶² a consumer advocacy organization, stated in 2019 that more than 100 Federal class actions involving various negative option terms and conditions have been filed since 2014. Notwithstanding these actions, according to TINA, “the incidence of deceptive negative option

⁶⁰ In the NPRM, the Commission cited a number of its law enforcement actions challenging negative option marketing practices, including, for example, *FTC v. Process Am., Inc.*, No. 1:14-cv-00386 (C.D. Cal. 2014) (processing of unauthorized charges relating to negative option marketing); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011) (internet free trials and continuity plans); *FTC v. MoneyMaker*, No. 2:11-cv-00461 (D. Nev. 2011) (internet trial offers and continuity programs); *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. 2010) (internet trial offers); and *FTC v. John Beck Amazing Profits, LLC*, No. 2:09-cv-04719 (C.D. Cal. 2009) (infomercial and telemarketing trial offers and continuity programs). Further examples of these matters include: *FTC v. Triangle Media Corp.*, No. 3:18-cv-01388 (S.D. Cal. 2018); *FTC v. Credit Bureau Ctr., LLC*, No. 1:17-cv-00194 (N.D. Ill. 2017); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014); *FTC v. One Techs., LP*, No. 3:14-cv-05066 (N.D. Cal. 2014); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014); *FTC v. NutraClick, LLC*, No. 2:16-cv-06819 (C.D. Cal. 2016); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. AAFE Prods. Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Pact, Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186 (S.D. Fla. 2016); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015); and *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017); see also *FTC v. WealthPress, Inc.*, No. 3:23-cv-00046 (M.D. Fla. 2023); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023); *FTC v. Amazon.com, Inc.*, No. 2:23-cv-0932 (W.D. Wash. 2023); *FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024); *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024).

⁶¹ See, e.g., *CFPB v. Transunion*, No. 1:22-cv-01880 (N.D. Ill. 2022); *CFPB v. ACTIVE Network, LLC*, No. 4:22-cv-00898 (E.D. Tex. 2022); *CFPB v. Sterling Jewelers, Inc.*, No. 1:19-cv-00448 (S.D.N.Y. 2019); *In re Equifax Inc., et al.*, CFPB No. 2017–CFPB–0001, 2017 WL 1036710 (Jan. 3, 2017) (consent order); *CFPB v. Prime Mktg. Holdings, LLC*, No. 2:16-cv-07111 (C.D. Cal. 2016); *In re Transunion Interactive, Inc., et al.*, CFPB No. 2017–CFPB–0002, 2017 WL 1036711 (Jan. 3, 2017) (consent order); *CFPB v. Student Financial Aid Servs., Inc.*, No. 2:15-cv-00821 (E.D. Cal. 2015); *CFPB v. Affinion Group Holdings, Inc.*, No. 5:15-cv-01005 (D. Conn. 2015); *CFPB v. Intersections Inc.*, No. 1:15-cv-835 (E.D. Va. 2015). Notably, the CFPB has independent authority to enforce FTC rules, and both agencies share some overlapping jurisdiction. See 12 U.S.C. 5581(b)(5)(B)(ii).

⁶² TINA, FTC–2019–0082–0014 (cmt. to ANPR, <https://www.regulations.gov/comment/FTC-2019-0082-0014>) and FTC–2023–0033–1139 (cmt. to NPRM).

⁵⁴ Subsequently, IFA also asserted there were disputed issues of material fact regarding the impact to both small businesses and their consumers. IFA, FTC–2024–0001–0009.

⁵⁵ Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042>.

⁵⁶ 15 U.S.C. 57a and 16 CFR 1.14(a)(1).

⁵⁷ 15 U.S.C. 57a(b)(3).

⁵⁸ 15 U.S.C. 57a(b)(3)(A)–(B); see also *Compassion Over Killing v. FDA*, 849 F.3d 849, 855 (9th Cir. 2017).

⁵⁹ NPRM, 88 FR 24725.

offers continues to rise.”⁶³ TINA also reports that deceptive negative options “have only continued to grow” since its 2019 comment.⁶⁴

Several state Attorneys General⁶⁵ also referenced dozens of enforcement actions taken in recent years to address the proliferation of deceptive negative option practices they regularly encounter, including the “lack of informed consumer consent, lack of clear and conspicuous disclosures, failure to honor cancellation requests and/or refusal to provide refunds to consumers who unknowingly enrolled in plans.”⁶⁶ These agencies explained their actions “demonstrate that problems persist in this area and that additional regulatory action is needed.”⁶⁷ For example, over the last decade, New York alone has reached 23 negative option settlements involving a variety of products and services such as membership programs, credit monitoring, dietary supplements, and apparel.⁶⁸ They also described several multi- and individual state law enforcement actions involving negative option offers for products and services such as satellite radio, social networking services, language learning programs, security monitoring, and dietary supplements. They further recounted numerous, illustrative complaints from consumers who ordered what they thought were free, no-obligation samples but then found themselves

enrolled in costly continuity programs.⁶⁹

Additionally, the State AGs outlined several ongoing investigations into deceptive or unfair negative option programs since 2019. These investigations include allegations of misrepresenting offers as free when they were not; and failure to clearly and conspicuously disclose negative option features.⁷⁰

Additionally, consumer advocacy organizations and others explained that the widespread prevalence of deceptive acts and practices underscores the “ongoing need for [S]tate engagement to limit negative option abuses.”⁷¹ Several commenters observed that more than half of States specifically regulate some aspect of negative option marketing.⁷² A group of law professors explain this “ongoing engagement just shows that unscrupulous negative-option business models remain such a problem that [S]tates increasingly find themselves needing to step in.”⁷³

Consumer Complaints and Comments. The FTC receives tens of thousands of complaints about negative options each year through its Sentinel complaint database, and marketers receive many more as demonstrated by

evidence in FTC cases.⁷⁴ Additionally, TINA explained that negative options are one of its top complaint categories. These complaints usually involve consumers who unwittingly enroll in programs and then find it difficult or impossible to cancel.⁷⁵

Moreover, hundreds of consumer comments detailed specific practices (discussed more thoroughly in connection with the section-by-section analysis below) demonstrating the prevalence of unfair or deceptive negative option practices. Likewise, comments from public interest and consumer advocacy groups further describe existing deceptive or unfair practices prevalent in the negative option marketplace. For example, Berkeley Consumer Law Center explained businesses regularly use dark patterns⁷⁶ to facilitate enrollment in subscription-based products and inhibit cancellation, and provided numerous examples of these activities.⁷⁷ A group of law professors referenced the burgeoning industry offering to help consumers identify and cancel their unwanted subscriptions. As they explained: “One might expect that, if consumers experienced the marketplace as one in which they are adequately informed of recurring payments and readily able to cancel them, there would not be an emerging industry to help them do just that.”⁷⁸

Members of Congress also detailed ongoing problems in this area. Citing the increase in consumer complaints and consumer harm in recent years, Representative Takano stated, “deceptive online marketing and unclear recurring payment plans are leaving too many consumers on the hook for products they may not want or even know they purchased.”⁷⁹ Representatives Schiff and Norton noted their constituents’ desire for greater protections in the negative option marketplace, stating the “proposed updates will help put the consumers

⁶³ NPRM, 88 FR 24720.

⁶⁴ TINA, FTC–2023–0033–1139.

⁶⁵ Several State Attorneys General offered comments to the ANPR (FTC–2019–0082–0012 (State Attorneys General cmt. to ANPR, <https://www.regulations.gov/comment/FTC-2019-0082-0012>)), and additionally 26 Attorneys General for the States of Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Vermont, Washington, and Wisconsin (“State AGs”) filed comments in response to the NPRM. See State AGs, FTC–2023–0033–0886 (cmt. to NPRM).

⁶⁶ NPRM, 88 FR 24720; State Attorneys General (ANPR), FTC–2019–0082–0012. They further explained the nature of the underlying products often fails to alert consumers of their enrollment in a negative option program. For instance, many offers involve credit monitoring or anti-virus computer programs costing less than \$20 a month and have no tangible presence for consumers. The State AGs explained consumers are often unaware of having ordered these products, never use them, and never notice them on their bills. The State AGs further explained these transactions often pull consumers into a stream of recurring payments by obtaining credit card information to ostensibly pay for a small shipping charge. Consequently, they commented many consumers have been billed for such services for years before discovering the unauthorized charges. *Id.*

⁶⁷ NPRM, 88 FR 24721.

⁶⁸ State Attorneys General (ANPR), FTC–2019–0082–0012.

⁶⁹ *Id.*

⁷⁰ State AGs, FTC–2023–0033–0886.

⁷¹ See, e.g., Joint comment from Professor Kaitlin Caruso (U. of Maine School of Law), Professor Jeff Sovern (St. John’s U. School of Law), Professor Dee Pridgen (U. of Wyoming College of Law), Professor Chrystin Ondersma (Rutgers Law School), Professor Vijay Raghavan (Brooklyn Law School), Professor David Vladeck (Georgetown U. Law Center), Professor Edward Janger (Brooklyn Law School), and Professor Susan Block-Lieb (Fordham U. School of Law) (collectively, “Law Professors”), FTC–2023–0033–0861.

⁷² See, e.g., PDMI, FTC–2023–0033–0864 (stating over 27 states regulate negative option marketing); N/MA, FTC–2023–0033–0873 (stating 35 states and the District of Columbia now have automatic renewal laws, and at least 20 address all forms of automatic renewals); Service Contract Industry Council (“SCIC”), FTC–2023–0033–0879 (noting about half of U.S. states enacted auto-renewal laws); NRF, FTC–2023–0033–1005 (stating at least half of all states have statutes governing free-trial, negative-option, and/or automatic-renewal programs); see also Law Professors, FTC–2323–0033–0861 (stating the “number of states that have recently adopted specific laws targeting negative option marketing, on top of their general prohibitions on unfair and deceptive practices and ability to enforce ROSCA, is particularly noteworthy.”); IHRSA, The Global Health & Fitness Association (“IHRSA”), FTC–2023–0033–0863 (noting many states have laws on negative options). *But see* The Center for Consumer Law and Economic Justice at UC Berkeley School of Law (“Berkeley Consumer Law Center”), FTC–2023–0033–0855 (stating that “fewer than half the states have a law specifically addressing negative option marketing”).

⁷³ Law Professors, FTC–2023–0033–0861. This group also points out that private industry, too, has felt the need for more action in this area, noting that VISA and Mastercard have their own requirements for businesses that bill using a negative option model.

⁷⁴ See, e.g., *United States v. Adobe, Inc.*, No. 5:24–cv–03630 (N.D. Cal. 2024) (ECF No. 40, Amd. Compl.); *FTC v. Amazon.com, Inc.*, No. 2:23–cv–0932 (W.D. Wash. 2023) (ECF No. 67, Amd. Compl.).

⁷⁵ TINA, FTC–2023–0033–1139.

⁷⁶ The term “dark patterns” has been used to describe design practices that trick or manipulate users into making choices they would not otherwise have made and that may cause harm. See *Bringing Dark Patterns to Light*, FTC Staff Report (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf.

⁷⁷ Berkeley Consumer Law Center, FTC–2023–0033–0855.

⁷⁸ Law Professors, FTC–2023–0033–0861.

⁷⁹ NPRM, 88 FR 24720–21.

back in control of their purchases and subscriptions.”⁸⁰

Studies. Finally, “studies cited by commenters confirm a pattern of consumer ensnarement in unwanted recurring payments.”⁸¹ A Better Business Bureau study of FTC data, titled “Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements,” demonstrated complaints about free trials doubled between 2015 and 2017, with complaints during the period reaching nearly 37,000.⁸² The BBB study shows consumer losses in FTC “free trial offer” cases exceeded \$1.3 billion (over the ten years covered by the study).⁸³ A group of consumer and public interest advocacy organizations, including the National Consumers League⁸⁴ stated that, according to the BBB, the average consumer loss for a free trial is \$186.⁸⁵

Referring to another survey conducted in 2016, TINA noted unwanted fees associated with trial offers and automatically renewing subscriptions ranked as “the biggest financial complaint of consumers.”⁸⁶ Similarly, TINA noted the FBI’s internet Crime Complaint Center recorded a rise in complaints about free trial offers, growing from 1,738 in 2015 to 2,486 in 2017.⁸⁷ A 2019 *Bankrate.com* survey cited by NCL found that 59% of

consumers have been signed up “against their will” for “free trials” that automatically converted into a recurring payment.⁸⁸

NCL and others also cited a 2017 national telephone survey commissioned by *CreditCards.com* finding 35% of U.S. consumers have enrolled in at least one automatically renewing contract without realizing it.⁸⁹ In response to the NPRM, the Public Interest Groups cited more recent studies confirming the continued prevalence of harms from deceptive and unfair negative option practices. For instance, consumer groups referenced a 2022 study, which concluded “on average, consumers pay two-and-a-half times what they originally estimated on monthly subscriptions, likely due to the lack of adequate notice from sellers.”⁹⁰ They also noted burdensome cancellation procedures remain rampant. “One survey found that more than half of respondents reported it took an average of three months to cancel unwanted recurring payments.”⁹¹ That same study reported 71% of individuals lost more than \$50 a month in unwanted subscriptions. Another study concluded consumers underestimate how much they pay to maintain their subscriptions by an average of \$133/month (or \$1,596 per year), and 42% of the consumers had forgotten about a subscription for which they continued to pay.⁹²

Finally, TINA also noted a consumer survey by the Washington Attorney General’s office finding “59% of Washingtonians (3.5 million residents) may have been unintentionally enrolled in a subscription plan or service when they thought they were making a one-time purchase.”⁹³ TINA contended this is “consistent with” the 2022 Bankrate

survey finding more than half of U.S. adults experience unwanted charges from a subscription or membership.⁹⁴ These findings are further supported by a Chase Bank study in 2021 finding nearly three-quarters of Americans waste more than \$50 a month on unwanted subscription fees.⁹⁵

Despite the robust evidence that unfair or deceptive practices are exceedingly prevalent, several trade organizations challenged the Commission’s proposed prevalence determination. However, their arguments, as discussed below, are not persuasive.

First, they argued the Commission must show prevalence in a specific industry in order to regulate negative option practices in that industry, but the Commission failed to do so. For instance, NCTA asserted there is no evidence of widespread deceptive negative option practices in the broadband, cable, or voice industries warranting regulation.⁹⁶ Other commenters argued the Commission must identify the prevalence of a specific deceptive or unfair act to warrant regulating that specific act or practice under Section 18. For instance, IAB, NCTA, TechNet, and TechFreedom argued the Commission failed to show prevalence of misrepresentations about the underlying product or service in connection with negative option contracts. Similarly, three commenters argued the Commission should limit the scope of the Rule to business-to-consumer transactions and exclude business-to-business (“B2B”) transactions, in part, because the Commission failed to show “the prevalence of harms created by automatically-renewing subscriptions entered into in the business-to-business context.”⁹⁷

As demonstrated above, however, there is ample evidence in the record demonstrating the prevalence of the specific unfair and deceptive practices across numerous sectors of the economy, which the Commission now addresses in an industry-neutral fashion.⁹⁸ Moreover, nothing in Section 18 requires the Commission to find prevalence regarding a specific industry or group.⁹⁹ The Commission need only

⁸⁰ Schiff and Norton, FTC–2023–0033–0868.

⁸¹ NPRM, 88 FR 24725.

⁸² Steve Baker, *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, Better Business Bureau (Dec. 2018), <https://www.bbb.org/article/investigations/18929-subscription-traps-and-deceptive-free-trials-scamillions-with-misleading-ads-and-fake-celebrity-endorsements>.

⁸³ *Id.*; see also Better Business Bureau, BBB Investigation Update: Free Trial Offer Scams (Apr. 2020), <https://www.bbb.org/article/news-releases/22040-bbb-update-free-trial-offerscams> (reporting the total has risen to nearly \$1.4 billion since the 2018 BBB study); *id.* (observing that while celebrities, credit card companies and government agencies have increased their efforts to fight deceptive free trial offer scams, victims continue to lose millions of dollars to fraudsters after the release of a December 2018 BBB study about the shady practices).

⁸⁴ The six public interest and consumer advocacy groups are: Consumer Action, Consumer Federation of America, Demand Progress Education Fund, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low income clients), and National Consumers League (“NCL”) (collectively, the “Public Interest Groups”).

⁸⁵ Steve Baker, *Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements*, Better Business Bureau (Dec. 2018).

⁸⁶ NPRM, 88 FR 24720 (citing Rebecca Lake, “Report: Hidden Fees Are #1 Consumer Complaint,” *mybanktracker.com* (updated Oct. 16, 2018), <https://www.mybanktracker.com/money-tips/money/hidden-fees-consumercomplaint-253387>).

⁸⁷ NPRM, 88 FR 24721.

⁸⁸ Bankrate, “Despite safety concerns, 64% of U.S. debit or credit cardholders save their information online” (Oct. 24, 2019), at <https://www.bankrate.com/pdfs/pr/20191024-online-shopping-survey.pdf> (as cited by Civil Society Organizations, FTC–2023–0033–0870).

⁸⁹ NPRM, 88 FR 24720.

⁹⁰ Public Interest Groups, FTC–2023–0033–0880 (citing “Subscription Service Statistics and Costs,” C+R Research Blog (May 18, 2022)).

⁹¹ Public Interest Groups, FTC–2023–0033–0880 (citing Chase, “Survey from Chase Reveals That Two-Thirds of Consumers Have Forgotten About At Least One Recurring Payment In The Last Year” (Apr. 1, 2021), <https://media.chase.com/news/survey-from-chase-reveals>).

⁹² State AGs, FTC–2023–0033–00866 (citing Sarah Brady and Korrena Bailie, “5 Tools To Help You Cancel Unwanted Subscriptions,” *Forbes* (July 13, 2022), <https://www.forbes.com/advisor/personal-finance/manage-subscriptions>). See also Einav, Liran, et al., “Selling Subscriptions” (Dec. 1, 2023), https://nmahoney.people.stanford.edu/sites/g/files/sbiybj23976/files/media/file/mahoney_subscriptions.pdf.

⁹³ TINA, FTC–2023–0033–1139.

⁹⁴ *Id.*

⁹⁵ See n.91.

⁹⁶ NCTA, FTC–2023–0033–0858; see also SCIC, FTC–2023–0033–0879.

⁹⁷ BSA, FTC–2023–0033–1015; see also Anonymous commenter, FTC–2023–0033–1007; NCTA, FTC–2023–0033–0858.

⁹⁸ See sections VII.A.1.a–b and section II.A.1.b of this SBP.

⁹⁹ See generally 15 U.S.C. 57a.

find “some basis or evidence” demonstrating the practice the Commission seeks to regulate “does indeed occur.”¹⁰⁰ Such evidence exists here in abundance. As NCTA itself pointed out, individual consumers complained of deceptive and unfair practices in its members’ industries.¹⁰¹ Further, “consumer subscription models are rapidly growing in popularity,”¹⁰² and there is evidence of the proliferation of negative option features in virtually every industry.¹⁰³ The

¹⁰⁰ *Pennsylvania Funeral Dirs. Ass’n, Inc. v. FTC*, 41 F.3d 81, 87–88 (3d Cir. 1994) (holding the FTC did not need “substantial, rigorous, quantitative studies” or to show the practice occurs in a certain percentage of transactions through the country to find prevalence). “Further, even where there is a limited record as to the prevalence of a practice on a nationwide basis or where the data reviewed only relates to a few states, the practice can be found to be prevalent enough to warrant a regulation.” *Id.* at 87.

¹⁰¹ NCTA, FTC–2023–0073–0008.

¹⁰² CTA, FTC–2023–0033–0997. CTA reports that a 2022 study found the global subscription e-commerce market is expected to reach \$904.2 billion by 2026, and between 2021 and 2022, existing subscription brands grew their customer bases by 31 percent.

¹⁰³ According to a 2018 McKinsey & Company study, the subscription e-commerce market increased more than 100% over a five-year period prior to the study’s publication. Tony Chen, Ken Fenyo, Sylvia Yang, and Jessica Zhang, “Thinking Inside the Subscription Box: New Research on E-Commerce Consumers,” McKinsey & Company (February 2018) (as cited by, e.g., TechNet, FTC–2023–0033–0869 and Individual commenter, FTC–2023–0033–0800). PDMI also observed that negative options are offered in a wide array of product and services from major brands including media services, meal preparation kits, shaving and beauty products, beer and wine, contacts and ordinary household consumables. FTC–2023–0033–0864. Digital Content Next (“DCN”), FTC–2023–0033–0983, reports the United States had more than one billion paid subscriptions in Q1 2023 across the digital media landscape, indicating almost all online U.S. households subscribe to one or more digital media subscription services. *See also*, e.g., Individual commenter, FTC–2023–0033–0137 (detailing difficulty cancelling recurring subscriptions for newspaper, mobile, and other businesses); Individual commenter, FTC–2023–0033–0217 (reported spending hours on the phone and online to cancel mobile account); Individual commenter, FTC–2023–0033–0465 (reported difficulty cancelling rewards program subscription); Individual commenter, FTC–2023–0033–0674 (complaint reporting difficulty canceling mobile device protection subscription); Individual commenter, FTC–2023–0033–0965 (trying to cancel mobile phone service because they bill for different amount every month); Individual commenter, FTC–2023–0033–0003 (difficulty cancelling “home warranty” subscription); Individual commenter, FTC–2023–0033–0004 (full cost and refund policy for gym contract not clearly disclosed); Individual commenter, FTC–2023–0033–0006 (“2 attempts and far too much time” to cancel radio subscription); Individual commenter, FTC–2023–0033–0008 (discussing how “subscription services in particular pervade the market. Even long-standing ‘buy-it-once’ products such as certain software suits have moved to subscription models”); Anonymous commenter, FTC–2023–0033–0013 (difficulty canceling home security monitoring contract, including hearing unwanted upsells); Anonymous commenter, FTC–2023–0033–0023 (webhosting

harms outlined here resulted from the negative option transaction itself, and many businesses, regardless of industry, are incentivized to continue to leverage negative options to the possible detriment of consumers.¹⁰⁴ The Commission also declines to limit the scope of the final Rule by excluding business-to-business transactions. As explained in Section VII.B.1, the Commission has a long history of protecting businesses, particularly small business, in their role as consumers; the practices and harms described here impact these consumers, as well.

(b) The Manner and Context in Which the Acts or Practices Are Unfair or Deceptive

Pursuant to Section 18 and the Commission’s Rules, the Commission must also state the manner and context in which the prevalent acts or practices are unfair or deceptive. The record demonstrates consumers are often lured into enrolling in negative option programs through seller misrepresentations about material facts—for instance, when a seller offers a product for “free” when it is not.¹⁰⁵ Additionally, sellers misrepresent other aspects of the deal, such as product features, processing or shipping fees, billing information use, deadlines, consumer authorization, refunds, cancellations, among other facts.¹⁰⁶

Sellers also often fail to disclose important information about the offer prior to billing the consumer. As detailed in the comments from, *inter alia*, State AGs and TINA, sellers fail to

service); Anonymous commenter, FTC–2023–0033–0024 (cable service); Individual commenter, FTC–2023–0033–0039 (language learning app); Anonymous commenter, FTC–2023–0033–0046 (software); Individual commenter, FTC–2023–0033–0049 (cannot cancel streaming service); Individual commenter, FTC–2023–0033–0050 (virus protection software and charity); Individual commenter, FTC–2023–0033–0052 (e-news service subscription); Individual commenter, FTC–2023–0033–0057 (magazine subscription service); Individual commenter, FTC–2023–00330061 (newspaper); Individual commenter, FTC–2023–0033–0063 (big box retailer membership); Individual commenter, FTC–2023–0033–0064 (cosmetics); Anonymous commenter, FTC–2023–0033–0066 (home warranty service); Individual commenter, FTC–2023–0033–0071 (lawncare service).

¹⁰⁴ *See* Prof. Chris Jay Hoofnagle, UC Berkeley (“Hoofnagle”), FTC–2023–0033–1137 (discussing the subscription economy). *See also* nn.245–252, collecting cases showing deceptive and unfair negative option practices occur across a wide range of industries and involve a variety of claims.

¹⁰⁵ State AGs, FTC–2023–0033–0886 (consumer paid for shipping on “free” gift only to have it converted to a paid item because she retained the item); *id.* (Money Map Press), *FTC v. Triangle Media Corp.*, No. 3:18–cv–01388 (S.D. Cal. 2018) (consumers who clicked on ads for risk free trials, paid for shipping and handling fees unwittingly enrolled in negative option programs).

¹⁰⁶ *See* nn.245–252 (collecting cases).

disclose in a clear and conspicuous manner the existence of the negative option feature, refund and cancellation deadlines, or other material terms of the agreement, resulting in consumers purchasing goods or services they do not want.¹⁰⁷ All of these unfair or deceptive acts are further supported in dozens of FTC, State AG, and class action cases.¹⁰⁸

The record also demonstrates sellers fail to obtain consumers’ express informed consent to the negative option feature before charging them. For instance, as detailed in representative consumer complaints from State AGs and several FTC cases, consumers are often unwittingly enrolled into recurring subscriptions with promises of no- or low-cost or discounted rates (not knowing that agreeing will result in subscription to a costly membership), with consumers not realizing the deceptive and unfair enrollment until they see unexpected charges, often after several billing cycles.¹⁰⁹

Finally, substantial record evidence shows sellers often fail to provide a simple cancellation method. If consumers cannot easily leave a negative option program when they wish, the negative option feature is merely a means of charging consumers for goods or services they no longer want. Commission cases, the Sentinel complaint database, and State Attorneys General’s complaints all show sellers often use difficult and cumbersome cancellation mechanisms to prevent or curtail cancellations.¹¹⁰ This fact is further corroborated by studies discussed above.¹¹¹

¹⁰⁷ *See* State Attorneys General (ANPR), FTC–2019–0082–0012 and State AGs, FTC–2023–0033–0886; TINA, FTC–2019–0082–0014 and FTC–2023–0033–1139.

¹⁰⁸ *See, e.g., id.*; *see also* *FTC v. Pact, Inc.*, No. 2:17–cv–1429 (W.D. Wash. 2017); *United States v. MyLife.com, Inc.*, No. 2:20–cv–6692 (C.D. Cal. 2020); *FTC v. NutraClick, LLC*, No. 2:20–cv–08612 (C.D. Cal. 2020); *In re Dun & Bradstreet, Inc.*, FTC Docket No. C–4761 (2022). *See generally* Staff Report, n.16.

¹⁰⁹ *See, e.g.,* State Attorneys General (ANPR), FTC–2019–0082–0012 and State AGs, FTC–2023–0033–0886; *FTC v. FloatMe Corp.*, No. 5:24–cv–00001 (W.D. Tex. 2024); *United States v. Cerebral, Inc.*, No. 1:24–cv–21376 (S.D. Fla. 2024); *FTC v. Bridge It, Inc.*, No. 1:23–cv–09651 (S.D.N.Y. 2023); *FTC v. Benefytt Techs., Inc.*, No. 8:22–cv–01794 (M.D. Fla. 2022); *FTC v. First Am. Payment Sys.*, No. 4:22–cv–00654 (E.D. Tex. 2022); *FTC v. NutraClick, LLC*, No. 2:20–cv–08612 (C.D. Cal. 2020); *FTC v. F9 Advert., LLC*, No. 3:19–cv–01174 (D.P.R. 2019); *FTC v. Age of Learning, Inc.*, No. 2:20–cv–07996 (C.D. Cal. 2020); *FTC v. NutraClick, LLC*, No. 2:16–cv–06819 (C.D. Cal. 2016); *FTC v. AH Media Grp., LLC*, No. 3:19–cv–04022 (N.D. Cal. 2019); *In re Urthbox, Inc.*, FTC Docket No. C–4676 (2019); *FTC v. Health Rsch. Labs., LLC*, No. 2:17–cv–00467 (D. Me. 2017); *FTC v. HispaNexo, Inc.*, No. 1:06–cv–424 (E.D. Va. 2006).

¹¹⁰ *See* section VII.B.6.

¹¹¹ Section VII.A.1.a.

(c) Statement as to the Economic Effect of the Rule

Finally, pursuant to section 18 and the Commission's Rules, the SBP must include a statement regarding the economic effect of the Rule. As part of these rulemaking proceedings, the Commission solicited and received comments on the economic impact of the proposed Rule. In issuing the final Rule, the Commission has carefully considered the comments and other information received as well as the costs and benefits of each provision, as discussed in more detail in section X, Final Regulatory Analysis. That analysis demonstrates the benefits of the Rule far exceed the costs. Benefits were evaluated on a per-cancellation basis; that is, the analysis assumes the primary consumer benefit of the Rule will come in the form of faster cancellations. Costs were evaluated primarily to reflect resources spent by businesses to review and come into compliance with the Rule. The overall net benefit of the Rule is estimated to exceed \$5.3B (and could be as much as \$49.2B) over the first 10 years (in 2023 dollars).

2. Magnuson-Moss Specificity Requirement

Pursuant to Magnuson-Moss, the Commission must also define with specificity acts or practices which are unfair or deceptive and either prohibit those activities or establish rules to prevent them. The Commission has done just that, despite some commenters' arguments to the contrary. Specifically, IAB and others¹¹² argue the provision prohibiting material misrepresentations fails to define claims that fall within its scope, and therefore, "fails to identify covered acts with the requisite level of specificity."¹¹³

First, section 18 does not require the Commission to define claims with specificity, only acts or practices. The practice of misrepresenting the material facts of a transaction, for instance, is a deceptive practice, but could vary depending on the transaction's terms. Requiring the Commission to identify particular claims would make its rules no better than a leaky sieve, unable to effectively address consumer harm.

Second, the NPRM and the final Rule do define with the requisite specificity

the unfair or deceptive negative option acts and practices covered by the Rule.¹¹⁴ While those critical of the proposed Rule cite to *Katharine Gibbs School v. FTC*, 612 F.2d 658 (2d Cir. 1979), this case is inapposite. In *Katharine Gibbs School*, the Second Circuit held the Commission failed to connect elements of its trade regulation rule to specifically defined unfair or deceptive acts or practices. The opinion held the Commission may not merely set requirements and then define failure to meet those requirements as unfair or deceptive acts or practices. The Commission must instead identify some underlying deceptive or unfair conduct and connect the rule requirements to that conduct.

In contrast here, the Commission specifically identified misrepresentation of material facts as a deceptive practice, and defined the term "material" with the same meaning it has under Section 5 of the FTC Act.¹¹⁵ Moreover, the misrepresentations provision goes further, providing categories of potentially material facts to assist the marketplace in understanding the provision and supporting those examples with cases.¹¹⁶ Thus, the final Rule's prohibition against material misrepresentations is not only connected to underlying deceptive or unfair conduct, but in fact prohibits that very conduct.

3. Other Legal Issues

Several commenters raised additional challenges to the Commission's ability to promulgate the Rule. These challenges fall into two categories. First, some commenters argued the Commission failed to give adequate notice of the scope of the proposed amendments to the Rule in the ANPR in accordance with Section 57a(b)(2)(A) of the FTC Act. Second, four commenters argued the Commission exceeded its grant of Congressional authority under the "major questions" doctrine. The Commission addresses each argument below.

¹¹⁴ See Section I; Section VII.A, defining the acts and practices covered in §§ 425.3 through 425.6 as unfair or deceptive and a violation of the Rule. As acknowledged by USTelecom, the "contours of the 'specificity' requirement have not been precisely defined." FTC-2023-0033-0876.

¹¹⁵ See SBP Section VII.B.3 discussing § 425.3.

¹¹⁶ *Id.* As explained in the *Katharine Gibbs School* dissent, "Congress required specific definitions of such practices so that a rule would 'reasonably and fairly inform those within its ambit of the obligation to be met and the activity to be avoided.'" 612 F.2d 658, 672 (quoting H.R. Rep. No. 93-1107, 93d Cong., 2d Sess. 46 (1974), reprinted in (1974) U.S.C.C.A.N., pp. 7702, 7727).

(a) ANPR

Several commenters asserted the ANPR, issued in 2019, failed to provide adequate notice of the acts and practices to be covered by the proposed Rule. Specifically, ESA, USTelecom, RILA, a coalition of trade associations, Chamber, CCA, IAB, and NRF argued the ANPR failed to provide notice the proposed Rule would cover misrepresentations of all material facts; would require express informed consent to opt-in to receive a save;¹¹⁷ and would require an annual reminder.¹¹⁸ Thus, according to these commenters, including these provisions in the final Rule would violate Section 18(b)(2)(A). They further argued the lack of these topics' inclusion in the ANPR meant that affected entities had inadequate opportunity to provide input, leading to an inadequate rulemaking record.¹¹⁹

These arguments, however, are unpersuasive. Section 18 imposes no requirement the ANPR have the level of specificity the commenters demand. In fact, the statute only says the ANPR must include "a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission."¹²⁰ The Commission included a discussion of each of these topics in the ANPR.¹²¹ Moreover, the affected entities have had the chance to raise concerns with the Rule in their comments to the NPRM, which the Commission has considered and responded to in this Statement of Basis and Purpose.

(b) Major Questions Doctrine

Four commenters asserted the Rule implicates the "major questions" doctrine.¹²² According to the Supreme Court, the major questions doctrine is implicated in "extraordinary cases . . . in which the history and the breadth of the authority that the agency has

¹¹⁷ As discussed in Section VII.B.6, the Commission removes the proposed save provision from the final Rule.

¹¹⁸ As discussed in Section VII.B.7, the Commission removes the proposed annual reminder provision from the final Rule.

¹¹⁹ E.g., IAB, FTC-2023-0033-1000.

¹²⁰ 15 U.S.C. 57a(b)(2)(A). "The Advance Notice [of Proposed Rulemaking] is a formal invitation to participate in shaping the proposed rule and starts the notice-and-comment process in motion." Office of the Federal Register, "A Guide to the Rulemaking Process," https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.

¹²¹ ANPR, 84 FR 52393; see also *id.* 52396-8 (Request for Comments); Section VII.B.3.b.1 (discussing ANPR in context of § 425.3).

¹²² PDMI, FTC-2023-0033-0864; ACT App Association, FTC-2023-0033-0874; Coalition, FTC-2023-0033-0884; Chamber, FTC-2023-0033-0885.

¹¹² IAB, FTC-2023-0033-1000; Coalition Comments from CCA, Direct Selling Association, Information Technology Industry Council, IAB, Software & Information Industry Association, and Chamber ("Coalition"), FTC-2023-0033-0884; PDMI, FTC-2023-0033-0864; TechNet, FTC-2023-0033-0869; TechFreedom, FTC-2023-0033-0872; ACT-The App Association ("ACT App Association"), FTC-2023-0033-0874; USTelecom, FTC-2023-0033-0876.

¹¹³ IAB, FTC-2023-0033-1000.

asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority.”¹²³ Citing this authority, the commenters argue Congress only granted the FTC “limited and tailored authorities to regulate certain mediums and types of negative option marketing, but not all mediums and types as the NPRM encompasses.”¹²⁴ Further, they assert Congress never intended for the Commission to create a comprehensive regulatory scheme for negative option marketing that encompasses the variety of requirements proposed in the NPRM. Because negative option programs play an ever-increasing role in the economy, these commenters claim the proposed Rule would “dramatically alter” how companies structure their subscription services.¹²⁵ More specifically, they assert the prohibition against misrepresentations, together with the ability to seek civil penalties in Federal court, would expand the FTC’s authority beyond that envisioned by Congress.

However, far from exceeding Congressional intent, the Rule merely effectuates that intent in a way wholly consistent with the specific requirements set forth in Section 18 of the FTC Act. Specifically, Congress explicitly authorized the Commission to prescribe “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)),” which “may include requirements prescribed for the purpose of preventing such acts or practices.”¹²⁶ As demonstrated below, each of the Rule’s provisions identifies specific deceptive or unfair acts or practices that are prevalent throughout the marketplace and ties each Rule provision tightly to those findings.

As the Supreme Court explained, courts use the “major questions doctrine” when examining “extraordinary cases” where agency action would “make a radical or fundamental change” to a statutory scheme and assert “extravagant” authority over the national economy through “ambiguous statutory text,” citing “modest words,” “vague terms,” “subtle device[s],” or “oblique or elliptical language.”¹²⁷ Here, no such

extraordinary circumstance exists. The prohibitions and disclosures in the Rule do not effect a major change in the economy. In fact, all the substantive requirements in the Rule are already extant under section 5 of the FTC Act, ROSCA, or the TSR. Moreover, the Rules’ terms, as explained below, are neither vague, oblique, or elliptical—in fact, if anything, they are clearer than the legal authority just cited.

B. Discussion of Specific Rule Provisions, Section-by-Section Analysis

Below, for each provision of the proposed Rule, the Commission reviews the provision, summarizes comments received in response, and sets forth the final Rule with an analysis of the comments and other record evidence.

1. Proposed § 425.1 Scope

The Commission proposed eliminating the old Rule’s prescriptive requirements applicable to prenotification plans and replacing them with flexible, but enforceable, standards. The proposed requirements would apply to all forms of negative option marketing, including prenotification and continuity plans, automatic renewals, and free trial offers.¹²⁸ The expanded coverage would establish a common set of requirements applicable to all types of negative option marketing. The proposed Rule would cover offers made in all media, including internet, telephone, in-person, and printed material, and would apply to all “negative option sellers.” With certain exceptions, not applicable here, the FTC Act provides the agency with jurisdiction over nearly every economic sector.¹²⁹

(a) Negative Option Seller

(1) Comments

The scope of the proposed Rule covered “negative option seller,” defined to mean “the person selling, offering, promoting, charging for, or otherwise marketing goods or services with a negative option feature.” Several

commenters raised concerns regarding the scope of this definition.

The Chamber, for example, suggested the Commission delete the term “promoting” from the definition.¹³⁰ It cited a wide variety of actors who could be swept in by the term, including “advertising companies, web designers, [and] entities in the supply chain,” who “may not actually play an active role in determining” what consumers see and hear about negative option programs.¹³¹ An individual business commenter also criticized the term, saying to include “promoting” “would potentially burden our technicians and our business when we provide service for equipment manufacturers that have their own service contract programs.”¹³²

ETA, representing the payments industry, addressed the words “charging for” in the definition.¹³³ ETA interpreted those words not to cover “intermediaries, such as payment processors, that merely effect the transfer of funds from the consumer buyer to the merchant seller resulting from a negative option feature.”¹³⁴ ETA noted that payment intermediaries typically “do not control the terms of the negative option feature and do not control the interface with the consumer buyer.”¹³⁵ ETA therefore suggested the final Rule “include an express exemption for payment processors and other intermediaries.”¹³⁶

Other commenters, while not specifically criticizing the definition of negative option seller, raised concerns about the scope of the proposed Rule where third parties are involved in marketing and cancellation. For example, several suggested the Rule exempt a seller who contracts with a third party for subscription enrollment, management, or cancellation services.¹³⁷ PDMI argued, “it is

¹³⁰ Chamber, FTC–2023–0033–0885.

¹³¹ *Id.*

¹³² Individual commenter, FTC–2023–0033–1136.

¹³³ Electronic Transactions Association (“ETA”), FTC–2023–0033–1004.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* IHSA noted health and fitness membership charges are typically processed on a monthly basis from the time of agreement, and in many cases by a third-party service provider. IHSA, FTC–2023–0033–0863.

¹³⁷ NCTA asserted, “The proposed rule also fails to account for third-party sign-up arrangements. For example, programmers have arrangements with Roku, Amazon, Apple, and others that allow consumers to sign up through these third parties for their streaming services.” NCTA, FTC–2023–0033–0858. NMA suggested the Commission “should make clear that when a sale with a negative option feature is made through a third party that controls the process of purchasing and/or cancelling a subscription with a negative option feature, any new requirements would apply to the third party only, and not to the company that fulfills the

¹²³ *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (internal quotations cleaned up). *Accord Biden v. Nebraska*, 143 S. Ct. 2355, 2372 (2023).

¹²⁴ Coalition, FTC–2023–0033–0884.

¹²⁵ See, e.g., PDMI, FTC–2023–0033–0864.

¹²⁶ 15 U.S.C. 57a(a)(1)(B).

¹²⁷ *West Virginia v. EPA*, 597 U.S. at 723 (cleaned up).

¹²⁸ The proposed Rule stated it applied to any form of negative option plan. Because “negative option plan” was a defined term in the old Rule specifically referring to prenotification plans, the Commission modifies the scope to apply to any form of “negative option program.”

¹²⁹ Certain entities or activities are wholly or partially exempt from FTC jurisdiction under the FTC Act, including most depository institutions, charities, transportation and communications common carriers, and the business of insurance. Under Sections 4 and 5 of the FTC Act, however, the Commission’s jurisdiction extends to companies organized to carry on business for their own profit or that of their members, even if those companies are organized under state law as a not-for-profit entity. See *California Dental Ass’n v. FTC*, 526 U.S. 756 (1999). But see n.151.

imperative that the Proposed Rule exempt sellers from compliance with those provisions that are not under their direct control . . . [and] should also exempt the seller from any misrepresentations made by a third-party platform.”¹³⁸ NRF expressed concern a careful retailer could still “face steep financial penalties for negligent misrepresentations (concerning, *e.g.*, product efficacy) based on information provided by third-party vendors.”¹³⁹

(2) Analysis

Based on the record, the Commission revises the definition of “negative option seller” to remove the word “promoting,” but declines to create status-based exemptions.¹⁴⁰ Moreover, the Commission clarifies it will enforce the final Rule in accordance with established section 5 principles regarding parties’ responsibilities for, and involvement in, relevant activity. This approach should fully address commenters’ concerns while maintaining the Rule’s consumer protections.

As several commenters observed, a wide variety of actors may have secondary or tertiary roles in promoting products or services with a negative option feature. Further, as the Chamber noted, “many of those participants . . . may not actually play an active role in determining how the negative option is presented to the consumer.”¹⁴¹ Similarly, participants in the promotion process may have no role in cancellation. Deleting the word “promoting” from the definition of negative option seller addresses this issue by ensuring those who have no active participation in the negative option feature are outside the Rule’s coverage. However, this amendment

does not mean all actors involved in promotion are exempt from the Rule. A participant who promotes and takes on a further role “selling, offering, charging for, or otherwise marketing goods or services with a negative option feature” remains subject to the final Rule, including the provisions covering “promoting” such goods or services for those who meet the negative option seller definition.¹⁴²

The Commission declines to adopt a status-based exemption for payment intermediaries. Such exemptions are overbroad, excluding actors engaged in the practices condemned by the Rule. For example, a payment processor selling its own services on a negative option basis, as opposed to just providing payment services for another negative option seller, is no different than any other business covered by the Rule. Additionally, as ETA correctly noted, the words “charging for” as used in the Rule do not cover intermediaries merely effecting the transfer of funds from the consumer buyer to the merchant seller. This is consistent with the Commission’s interpretation of ROSCA’s coverage of persons who “charge or attempt to charge any consumer.”¹⁴³ Based on longstanding section 5 principles, the Commission has not enforced ROSCA against payment intermediaries solely for their conduct in effecting funds transfers.¹⁴⁴ The Commission will apply the same principles to the Rule.¹⁴⁵

Similarly, the Commission will not grant blanket exemptions to sellers who contract with third parties while offering subscription services. The Commission expects negative option sellers to evaluate their commercial relationships with the Rule’s provisions in mind. Even where a seller does not directly manage its negative option

feature disclosures, consent, or cancellation, it can satisfy its obligations under the Rule by choosing to contract with third parties who act in accordance with the Rule and monitoring those parties’ performance. An exemption for all sellers who contract with third parties to manage aspects of their negative option programs would effectively nullify the Rule by incentivizing less than legitimate sellers to contract with actors engaged in deceptive practices to maximize negative option enrollments and frustrate cancellation with impunity. A seller cannot evade its responsibility to deal honestly with consumers by contracting with a third party who does not.¹⁴⁶

(b) Insurance

(1) Comments

Several commenters asked the Commission to expressly exclude insurance and State-regulated service contracts from the Rule.¹⁴⁷ They argued Congress prohibited the FTC from regulating the “business of insurance” in section 2 of the McCarran-Ferguson Act and the FTC exempted insurance sales in its Cooling-Off Rule.¹⁴⁸ They also asserted, “State regulations in every jurisdiction require an insurer to give notice of a policy renewal,” and State rules prohibit negative options.¹⁴⁹ Other commenters argued the Commission should exempt all service contract providers from the Rule due to existing State laws and regulations,¹⁵⁰ regardless

¹⁴⁶ *E.g.*, *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 170 (2d Cir. 2016) (“A defendant may be held liable for its own acts of deception under the FTC Act, whether by directly participating in deception or by allowing deceptive acts or practices to occur that are within its control.”); *see also FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927, 939 (N.D. Cal. 2010) (“Even if Inc21 did not approve of the fraud (and it seems likely that it *did* approve), the fact remains that Inc21 is responsible for organizing this engine of fraud and reaping its profits. As such, Inc21 may *certainly* be held accountable[.]”) (emphasis in original).

¹⁴⁷ Asurion, FTC–2023–0033–0878; Florida Service Agreement Association, FTC–2023–0033–0882; American Property Casualty Insurance Association (“APCIA”), FTC–2023–0033–0996; National Association of Mutual Insurance Companies (“NAMIC”), FTC–2023–0033–1143.

¹⁴⁸ *See* 15 U.S.C. 1012; 16 CFR 429(a)(6).

¹⁴⁹ NAMIC, FTC–2023–0033–1143.

¹⁵⁰ SCIC, FTC–2023–0033–0879 (noting SCIC’s comment to the ANPR stated most states have substantial regulatory frameworks for service contracts and that industry operates nationwide consistent with the intent of the proposed Rule); CTIA, FTC–2023–0033–0866 (noting service contracts are typically regulated by state departments of insurance and most states with autorenewal laws, including California, New York, and Oregon, provide an exemption for entities regulated by the state department of insurance); Frontdoor, Inc. (“Frontdoor”), FTC–2023–0033–0862 (noting majority of states have rigorous laws

subscription.” N/MA, FTC–2023–0033–0873. Marketplace Industry Association (“MIA”) requested “the Commission clarify that where there are third-party payment platforms managing Subscriptions on behalf of businesses . . . (collectively, “Third Party Subscription Managers”), that such Third Party Subscription Managers be legally responsible and legally liable for compliance with the proposed Rule. As is the case with Third Party Subscription Managers, businesses that offer Subscriptions have zero control over such Subscriptions, including the initiation of Subscriptions or the cancellation of Subscriptions. Said another way, it is impossible for businesses to comply with the proposed Rule where there are Third Party Subscription Managers. As such, the Association requests that the Commission make clear that Third Party Subscription Managers be responsible for compliance with the proposed Rule, including any penalties for noncompliance.” MIA, FTC–2023–0033–1008.

¹³⁸ PDMI, FTC–2023–003–0864.

¹³⁹ NRF, FTC–2023–0033–1005.

¹⁴⁰ *See also* Section VII.B.1; Section VIII.A.1.

¹⁴¹ Chamber, FTC–2023–0033–0885.

¹⁴² *See, e.g.*, *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 172 (2d Cir. 2016) (operator of affiliate marketing network liable where it did not create ads but “directly participat[ed] in the deceptive scheme by recruiting, managing, and paying a network of affiliates to generate consumer traffic through the use of deceptive advertising and allowing the use of deceptive advertising where it had the authority to control the affiliates participating in its network.”).

¹⁴³ 15 U.S.C. 8403.

¹⁴⁴ *See FTC v. Apex Capital Grp., LLC*, No. 2:18–cv–09573 (C.D. Cal. 2018). In this ROSCA matter, the Commission amended its complaint to add payment intermediary defendants for their unlawful conduct in connection with the scheme. However, the Commission did not assert ROSCA claims against the payment intermediary defendants, instead asserting counts for credit card laundering and manipulation of chargeback levels as Section 5 violations.

¹⁴⁵ *Id.*; *see FTC v. First Am. Payment Sys., No. 4:22–cv–00654* (E.D. Tex. 2022) (ROSCA case against payment processor for its unlawful acts and practices against its merchant customers).

of whether they are engaged in the “business of insurance” within the meaning of the McCarran-Ferguson Act.

(2) Analysis

The Commission declines to exempt insurance or service contracts from the Rule. The final Rule can be enforced by the Commission only against covered persons and activities within the Commission’s jurisdiction.¹⁵¹ Restating or further specifying each jurisdictional limit in the final Rule’s text, therefore, is not necessary.

Additionally, the requested industry-wide exemption is considerably broader than the FTC’s jurisdictional limitations. The McCarran-Ferguson Act does not exempt entities engaged in the business of insurance from the Commission’s jurisdiction unless such entities are subject to State regulation.¹⁵² Moreover, activities of entities within the insurance industry that are beyond the scope of the “business of insurance” are subject to the Commission’s jurisdiction.¹⁵³ No commenter provided any compelling reason to exempt these otherwise covered activities from the Rule.

Finally, commenters’ citations to existing State laws and regulations governing service contract sellers indicate these sellers already provide disclosures and protections consistent with the Rule. As a practical matter, sellers who already provide consumers the Rule’s protections should not be burdened by its application.¹⁵⁴

(c) Business-to-Business

(1) Comments

Nine commenters noted the NPRM did not expressly address whether the

proposed Rule would apply to business-to-business (“B2B”) transactions. Seven, including five industry associations,¹⁵⁵ said it should not apply.¹⁵⁶ Two individuals disagreed.¹⁵⁷

Commenters advocating against including B2B sales in the Rule asserted the Commission should presume businesses are more sophisticated than individual consumers,¹⁵⁸ and contended B2B contracts typically are individually negotiated.¹⁵⁹ For example, ZoomInfo maintained business consumers are generally “more sophisticated than individual consumers,” explaining B2B contracts “are assumed to result from arm’s-length negotiation and often benefit from professional legal counsel.”¹⁶⁰ Similarly, NCTA, an organization representing the internet and television industry, characterized business consumers as “typically sophisticated,” and said the Commission should not intervene in transactions based on “[n]on-form contracts that are the subject of extensive bargaining between sophisticated companies.”¹⁶¹

Seller and consumer commenters differed on whether the harmful negative option practices discussed in the NPRM are extant for B2B consumers. In support of excluding B2B transactions, two commenters asserted there is insufficient evidence of harm in the B2B context to support a prevalence finding.¹⁶² A B2B consumer, however, noted individuals and small businesses both suffer from the harms of deceptive and unfair negative option practices. “As a small business owner,” the individual wrote, “as well as a

consumer, I am especially aware of how purposely difficult many companies make it to cancel their services. From telephone companies to travel channel companies . . . to email targeting campaigns . . . the cancelling process is ridiculously complex and at times hidden, if it exists at all on their websites.”¹⁶³

Seller and consumer commenters also differed on the significance of existing State law B2B exclusions. Three B2B sellers recommended the Commission follow those States that exclude B2B transactions.¹⁶⁴ A consumer, however, asserted such exclusions are why this Rule is necessary.¹⁶⁵ Specifically, the commenter explained: “negative option marketing also greatly affect[s] many individual sellers and small businesses,” but due to B2B exclusions, “some larger corporations or companies are able to take advantage of that loophole and use predatory negative option practices against individual sellers and small businesses.”¹⁶⁶

Some sellers also referred to other Federal regulations to support excluding businesses from the scope of the Rule. For instance, ETA and NCTA each noted the Commission excluded most B2B transactions in the TSR. ETA made the same observation about the Cooling Off Rule.¹⁶⁷ Both CTIA and USTelecom approvingly cited the FCC’s approach. USTelecom explained, “the FCC has limited certain consumer protection rules to ‘mass-market retail services’ that are ‘marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries.’”¹⁶⁸ USTelecom further explained, “Mass-market retail services stand in contrast to ‘customized or individually negotiated arrangements’ that are typically offered to larger organizations.”¹⁶⁹

ETA questioned whether the Commission has authority to address B2B transactions. ETA argued the proposed Rule would let the Commission “interpose regulatory influence and law enforcement authority in contractual arrangements between businesses in a way that has not been authorized by Congress or

for the offering, sale, and renewal of home service contracts, including the use of automatic renewals and applicable cancellation rights).

¹⁵¹ Nothing in this Rule, however, shall limit another agency’s ability to enforce this Rule within its own statutory authority, even if that authority is different than the FTC’s authority. *See, e.g.*, 12 U.S.C. 5581(b)(5)(B)(ii).

¹⁵² *FTC v. IAB Mktg. Assocs. LP*, 746 F.3d 1228, 1235 (11th Cir. 2014) (“[T]he FTC Act applies to the business of insurance only to the extent that such business is not regulated by state law.”).

¹⁵³ The Supreme Court has explained that, under the McCarran-Ferguson Act, a three-part factual inquiry is necessary to evaluate whether any particular activity constitutes the business of insurance. *See Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129 (1982). First, does the activity have the effect of transferring or spreading a policyholder’s risk; second, is the activity an integral part of the policy relationship between the insurer and the insured; and third, is the practice limited to entities within the insurance industry. *Id.* This inquiry requires a factual analysis of the activities in question.

¹⁵⁴ Moreover, service contract sellers, like other interested persons, may seek full or partial exemption from the final Rule. *See* Section VIII.A.1 (discussing new § 425.8, Exemptions provision).

¹⁵⁵ BSA, FTC–2023–0033–1015 (B2B software sellers); CTIA, FTC–2023–0033–0866 (wireless communication industry); ETA, FTC–2023–0033–1004 (payments industry); NCTA, FTC–2023–0033–0858 (internet and television); USTelecom, FTC–2023–0033–0876 (broadband). A sixth association, the U.S. Chamber of Commerce, asked the Commission to ensure that the scope of its cost-benefit analysis includes business-to-business transactions. FTC–2023–0033–0885.

¹⁵⁶ Anonymous commenter, FTC–2023–0033–1007; BSA, FTC–2023–0033–1015; CTIA, FTC–2023–0033–0866; ETA, FTC–2023–0033–1004; NCTA, FTC–2023–0033–0858; USTelecom, FTC–2023–0033–0876; ZoomInfo, FTC–2023–0033–0865.

¹⁵⁷ Individual commenter, FTC–2023–0033–0755; Individual commenter, FTC–2023–0033–0042.

¹⁵⁸ Anonymous commenter, FTC–2023–0033–1007; CTIA, FTC–2023–0033–0866; NCTA, FTC–2023–0033–0858; ZoomInfo, FTC–2023–0033–0865.

¹⁵⁹ CTIA, FTC–2023–0033–0866; NCTA, FTC–2023–0033–0858; USTelecom, FTC–2023–0033–0876; ZoomInfo, FTC–2023–0033–0865.

¹⁶⁰ ZoomInfo, FTC–2023–0033–0865.

¹⁶¹ NCTA, FTC–2023–0033–0858. NCTA requested any final rule exclude individually negotiated business-to-business contracts. FTC–2023–0033–0858.

¹⁶² BSA, FTC–2023–0033–1015; NCTA, FTC–2023–0033–0858. The Commission discusses the subject of prevalence more broadly at Section VII.A.

¹⁶³ Individual commenter, FTC–2023–0033–0755.

¹⁶⁴ Anonymous commenter, FTC–2023–0033–1007 (California); BSA, FTC–2023–0033–1015 (California, Colorado, Delaware); ZoomInfo, FTC–2023–0033–0865 (California, Colorado, Connecticut, Delaware, Hawaii, New York, Oregon, Tennessee, Virginia).

¹⁶⁵ Individual commenter, FTC–2023–0033–0042.

¹⁶⁶ *Id.*

¹⁶⁷ 16 CFR 429.0–429.3.

¹⁶⁸ USTelecom, FTC–2023–0033–0876.

¹⁶⁹ *Id.*

justified by the Commission's own rationale for the Proposed Rule."¹⁷⁰ ETA cited the Commission's use of ROSCA in the *First American Payment Systems* case to illustrate its view the Rule's application in the B2B context would be impermissible regulation of "an automatic renewal clause in an arm's length commercial agreement."¹⁷¹

Finally, ETA and ZoomInfo argued various provisions of the Rule, such as the disclosure and notice requirements, could present unusual implementation problems in B2B transactions. For instance, ETA asserted disclosure requirements could result in operational uncertainty because the Commission did not consider all the typical terms included in B2B agreements. Similarly, ZoomInfo explained "B2B agreements are often complex, involving multiple decision-makers and points of contact, who might rotate or leave their roles over the course of a contract."¹⁷²

(2) Analysis

The final Rule, like the proposed Rule, covers B2B transactions. It has been the Commission's longstanding view that section 5 of the FTC Act¹⁷³ protects business consumers as well as individual consumers. Moreover, commenters' arguments that, under section 5, all business consumers must be held to a heightened standard of sophistication are inconsistent with settled law.

The Commission has long enforced the FTC Act against those who deceive and act unfairly to businesses and other organizations.¹⁷⁴ As the Supreme Court explained in *FTC v. Standard Educ. Soc.*, 302 U.S. 112, 116 (1937), "Laws are made to protect the trusting as well as the suspicious." This principle applies no less to the business consumer than to the individual.¹⁷⁵ The Commission maintains a decades-long list of business protection cases on its website and dedicates significant effort

to educate and protect small businesses.¹⁷⁶ Indeed, the Commission has made protecting small businesses a priority.¹⁷⁷

Moreover, the TSR never exempted B2B transactions entirely. Importantly, the Commission recently amended the TSR to cover a broader scope of B2B activity. Specifically, in 2024, the Commission expanded the TSR to prohibit material misrepresentations and false or misleading statements in B2B calls due to the ongoing harm to small businesses from such practices.¹⁷⁸

Additionally, recent Commission actions to protect small businesses underscore the fact deceptive practices pertaining to negative option features occur in B2B transactions just as they do with individual consumers. None of these cases present the arms-length negotiation of contracts by sophisticated parties that commenters claim to be universal. For example, in its 2022 action against *First American Payment Systems*,¹⁷⁹ the Commission alleged the defendants violated section 5 and ROSCA by making false claims about fees and cost savings to persuade merchants in small- and medium-sized businesses, many of whom had limited English proficiency, to enter into payment processing agreements.¹⁸⁰ Once enrolled, the defendants allegedly withdrew funds from merchants' accounts without consent, and made it difficult and expensive to cancel the service. Under a stipulated court order, the defendants must (among other things) make it easier for merchants to cancel their services.

In the Commission's 2022 *Dun & Bradstreet*¹⁸¹ matter, the complaint

alleged multiple deceptive practices pertaining to products the defendant marketed to small- and medium-sized businesses, in violation of section 5. The resulting consent order includes substantial provisions pertaining to negative option features.

The Commission's 2022 action against *Vonage*¹⁸² also illustrates this point. The complaint detailed the defendants' deceptive and unfair practices targeting both business and residential customers and alleged those practices violated section 5 and ROSCA.¹⁸³ The stipulated court order includes multiple provisions relating to consent, cancellation, and disclosures pertaining to both individual and business consumers.

Nonetheless, two arguments for excluding B2B transactions warrant additional discussion. *First*, several commenters elide the distinction between B2B agreements generally and individually negotiated B2B agreements. It is neither the purpose nor the effect of the final Rule to prevent businesses from entering into agreements with individually negotiated negative option terms. By requiring the cancellation mechanism to be "at least as easy to use" as the consent mechanism, the final Rule incorporates a symmetrical standard that accounts for individually negotiated B2B agreements. A B2B consumer who consents to a negative option feature through an individually negotiated term of an agreement can also individually negotiate the cancellation mechanism. Moreover, as the Commission noted above, it will enforce this Rule in the same manner in which it enforces section 5 of the FTC Act.¹⁸⁴ The Commission has not used its consumer protection authority in the type of large individually negotiated B2B transactions commenters are worried about.¹⁸⁵ Unsurprisingly, no commenter cited any historical instance to the contrary. Thus, the Rule preserves the ability of sophisticated business consumers to individually negotiate B2B agreement terms.¹⁸⁶

¹⁷⁰ ETA, FTC-2023-0033-1004.

¹⁷¹ *Id.* (citing *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022)).

¹⁷² ZoomInfo, FTC-2023-0033-0865. ETA also raised a concern about the definition of negative option seller, addressed in Section VII.B.1.a.

¹⁷³ 15 U.S.C. 45(a).

¹⁷⁴ See, e.g., *Indep. Directory Corp. v. FTC*, 188 F.2d 468 (2d Cir. 1951) (deceptive practices in selling directory ads to businesses).

¹⁷⁵ *Indep. Directory Corp.*, 188 F.2d at 470 (applying *Standard Educ. Soc.*); see also, e.g., *FTC v. LoanPointe, LLC*, 525 F. App'x 696, 701 (10th Cir. 2017) (FTC need only prove "the likelihood that a consumer (here, employers)" would be deceived); *FTC v. Crittenden*, 19 F.3d 26 (9th Cir. 1994) (Table) (noting stipulated judgment with B2B office supplier); *FTC v. Inc21.com Corp.*, 688 F. Supp. 2d 927 (N.D. Cal. 2010) (preliminary injunction against deceptive and unfair B2B billing scheme); *FTC v. IFC Credit Corp.*, 543 F. Supp. 2d 925, 934 (N.D. Ill. 2008) (FTC Act applies to B2B sales).

¹⁷⁶ See Fed. Trade Comm'n, "Protecting Small Businesses: Cases," <https://www.ftc.gov/business-guidance/small-businesses/protecting-small-businesses-cases> (last visited October 23, 2024); Fed. Trade Comm'n, "Protecting Small Businesses," <https://www.ftc.gov/business-guidance/small-businesses> (last visited October 23, 2024); Fed. Trade Comm'n, "Scams and Your Small Business: A Guide For Business," <https://www.ftc.gov/business-guidance/resources/scams-your-small-business-guide-business> (last visited October 23, 2024).

¹⁷⁷ See Press Release, Fed. Trade Comm'n, "FTC, BBB, and Law Enforcement Partners Announce Results of Operation Main Street: Stopping Small Business Scams Law Enforcement and Education Initiative" (June 18, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-bbb-law-enforcement-partners-announce-results-operation-main> (last visited October 23, 2024).

¹⁷⁸ TSR, 89 FR 26760 (April 16, 2024).

¹⁷⁹ *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022).

¹⁸⁰ In describing the basis for the proposed Rule, the NPRM cited (among other cases) *First Am. Payment Sys.* NPRM, 88 FR 24726 n.65. See also *ETA, FTC-2023-0033-1004*.

¹⁸¹ *In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022).

¹⁸² *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-06435 (D.N.J. 2022).

¹⁸³ The *Adobe* matter provides another recent example of a matter alleging unlawful negative option practices targeting both individual and business consumers. *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024).

¹⁸⁴ See section VII.B.1.a.

¹⁸⁵ See 16 CFR 2.3.

¹⁸⁶ The *Vonage* order expressly exempts negative option feature provisions in B2B contracts where the defendants "possess evidence that consumers negotiated significant terms of the negative option feature that are only negotiable with business consumers." *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-06435 (D.N.J. 2022). The final Rule is less prescriptive and more flexible than that order,

Second, it appears several commenters mistakenly thought the required simple cancellation mechanism would necessarily terminate all aspects of any broader contract or agreement. In fact, this provision only pertains to cancellation of the negative option feature. Complex commercial agreements, such as those described by ETA, will have numerous provisions unrelated to negative option features. Nothing in this Rule prohibits these provisions from being subject to separate cancellation and termination terms.

2. Proposed § 425.2 Definitions

In the NPRM, the proposed Rule set forth several definitions. For example, the proposed Rule defined “negative option feature” as a contract provision under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel an agreement is interpreted by the negative option seller as acceptance or continuing acceptance of an offer. This definition is consistent with the TSR and ROSCA (which references the TSR’s definition). The proposed term includes, but is not limited to, automatic renewals, continuity plans, free-to-pay conversion or fee-to-pay conversions, and pre-notification negative option plans.¹⁸⁷

Additionally, the proposed Rule defined “clear and conspicuous,” “negative option seller,” and “save.” To define “clear and conspicuous,” the FTC imported its definition developed through years of enforcement experience. As explained in the NPRM, the proposed definition substantially overlaps with the concepts provided in California and District of Columbia negative option laws,¹⁸⁸ with one exception. Specifically, the District of Columbia definition requires disclosures to be visually proximate to any request for consumer consent. The final Rule incorporates this requirement in a separate consent section.

(a) Summary of Comments

The Commission did not receive any comments specifically supporting any proposed definition, though several commenters generally supported the concepts incorporated in the definitions, such as “clear and conspicuous disclosures.” Several commenters critiqued the Commission’s omission of certain definitions, such as

“material” in connection with § 425.3 and § 425.4,¹⁸⁹ “simple cancellation mechanism,”¹⁹⁰ “practical,” and “normal business hours,”¹⁹¹ because these terms are used throughout the Rule. Other commenters asked the Commission to add a definition for “consumer” that excludes businesses,¹⁹² while another asked the Commission to include small businesses in that definition.¹⁹³ Similarly, other commenters asked the Commission to “exempt” certain industries from, or otherwise alter the scope of, the definition of “negative option seller.”¹⁹⁴

Several commenters critiqued the proposed definitions. For example, ESA stated “the definition of ‘save’¹⁹⁵ is overly broad and would prohibit the presentation of useful, consumer-friendly details about a consumer’s subscription before they cancel it.”¹⁹⁶ Other commenters questioned why the “clear and conspicuous” definitions says a disclosure is not clear and

conspicuous, if a consumer must click on a hyperlink to see it.¹⁹⁷

Additionally, several commenters requested the Commission revise certain of its proposed definitions for clarity. For instance, the National Federation of Independent Businesses (“NFIB”) asked the Commission to revise the definitions for “clear and conspicuous” and “negative option feature” to “make their meanings clearer”¹⁹⁸ by, for example, using simpler words in the clear and conspicuous definition (“words and grammar” versus “diction and syntax”) or by providing detailed examples of each type of program covered in the definition of negative option feature. NFIB further explained “Those regulated by and served by subsection 425.2(d) most likely would understand the meaning of an automatic renewal, but perhaps not the meaning of the other examples.”¹⁹⁹

(b) Analysis

Based on the record, the Commission makes several changes to the proposed definitions. First, as explained in sections VII.B.1.3 (material) and VII.B.6.c.2.b.ii (interactive electronic medium), it adds definitions of material and interactive electronic medium for clarity. Further, as discussed in section VII.B.4, the Commission modifies the definition of clear and conspicuous.

Second, the Commission removes the definition of save. As discussed in section VII.B.6.c the proposed saves provision did not achieve the right balance between protecting consumers from unfair tactics and allowing sellers to provide necessary and valuable information about cancellation. Therefore, the Commission declines to include the NPRM’s proposed limitation on saves, and instead will consider issuing an SNPRM in the future for

¹⁸⁹ See, e.g., BSA, FTC–2023–0033–1015 (material is not defined); Chamber, FTC–2023–0033–0885 (same).

¹⁹⁰ Center for Data Innovation (“CDI”), FTC–2023–0033–0887; see also Act App Association, FTC–2023–0033–0874; NRF, FTC–2023–0033–1005 (failed to define “as simple as”).

¹⁹¹ International Carwash Association, FTC–2023–0033–1142.

¹⁹² See, e.g., Anonymous commenter, FTC–2023–0033–1007; Zoominfo, FTC–2023–0033–0865; CTIA, FTC–2023–0033–0866; BSA, FTC–2023–0033–1015.

¹⁹³ Individual commenter, FTC–2023–0033–0042.

¹⁹⁴ See, e.g., Asurion, FTC–2023–0033–0878 (exempt service contracts); Chamber, FTC–2023–0033–0885 (exclude promoting); ETA, FTC–2023–0033–1004 (exclude “charging for”). These requests are more appropriately addressed in the scope and requested exemptions, and the Commission does not consider them here.

¹⁹⁵ Save was defined in the proposed Rule as an attempt by a seller to present any additional offers, modifications to the existing agreement, reasons to retain the existing offer, or similar information when a consumer attempts to cancel a negative option feature.

¹⁹⁶ ESA, FTC–2023–0033–0867. PDMI argued similarly as to the definition of save. FTC–2023–0033–0864 (arguing sellers should be able to be able to immediately discuss pause, skip or modification options without having to ask for permission, particularly because it is impossible to know which customers prefer to cancel as opposed to merely modify their current plan). *Accord* USTelecom, FTC–2023–0033–0876 (definition of Save overly broad); RILA, FTC–2023–0033–0883 (modify definition of save to allow short clarification and confirmation of intent follow-up communications); Chamber, FTC–2023–0033–0885; CDI, FTC–2023–0033–0887 (“Commission should exclude information about permanent, irreparable harms that may result from cancellation, and is relevant to the current subscription or product plan.”); CCIA, FTC–2023–0033–0984; IAB, FTC–2023–0033–1000 (definition of save overly broad and “would prohibit the presentation of useful, consumer-friendly details about a consumer’s subscription before they cancel it.”).

¹⁹⁷ See, e.g., NCTA, FTC–2023–0033–0858 (definition does not take into account small screens); Chamber, FTC–2023–0033–0885 (“The requirements that disclosure on the internet or mobile applications be ‘unavoidable’ and ‘immediately adjacent’ raise practical concerns.”); CCIA, FTC–2023–0033–0984 (definition should “hew closely to the Commission’s guidance in its .com Disclosures policy to ensure regulatory consistency.”).

¹⁹⁸ NFIB, FTC–2023–0033–0789. *Accord* Kuehn, FTC–2023–0033–0871 (proposed revised definition of negative option feature); Chamber, FTC–2023–0033–0885 (requests the definition of negative option feature to be revised to exclude monthly subscription services). See section VII.B.4 for further discussion of proposed modifications. See also ETA, FTC–2023–0033–1004 (clarify and narrow “automatic renewal in the definition).

¹⁹⁹ NFIB, FTC–2023–0033–0789 (requesting specific examples of each type of program be included in the definition of negative option feature); see also IHRSA, FTC–2023–0033–0863 (observes the Commission does not define what “automatic renewal, continuity plan” and other examples of negative option features mean).

thereby promoting more flexibility in the marketplace.

¹⁸⁷ Section II of this Notice contains descriptions of these various plans.

¹⁸⁸ Cal. Bus. & Prof. Code section 17601 and DC Code section 28A–202.

further comment. Accordingly, without the saves provision, the Commission determines there is no need for a defined term at this time.

Although several commenters critiqued the lack of definitions for such terms as “simple cancellation mechanism,” “practical,” or “normal business hours,” the Commission addresses these concerns with further clarification, rather than with formal definitions, in the section-by-section analysis below. As to commenter requests for a definition of “consumer” expressly excluding (or including) business-to-business transactions, the Commission similarly addresses these requests in the sections regarding scope and requested exemptions, above.

Finally, NFIB asked the Commission to add specific examples of each type of negative option program to the text of the Rule, stating those served by the Rule would likely not understand these “terms of art.”²⁰⁰ The Commission discusses examples of each type of negative option program in more detail as part of the SBP at section II. Further, the Commission typically engages in robust consumer and business education campaigns when promulgating and issuing final rules and will do so here. The Commission therefore disagrees the Rule must incorporate these examples into the text.²⁰¹

3. Proposed § 425.3 Misrepresentations

Section 425.3 of the proposed Rule prohibited sellers from misrepresenting “any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service.”²⁰² As explained in the NPRM, “misrepresentations in negative option marketing cases often involve deceptive representations not only related to the negative option feature but to the underlying product (or service) or other aspects of the transaction as well.”²⁰³ These include “misrepresentations related to costs, product efficacy, free trial claims, processing or shipping fees, billing information use, deadlines, consumer authorization, refunds, [and] cancellation.”²⁰⁴

The FTC Act provides the legal basis for the Commission to prevent and remedy misrepresentations in the negative option context. Specifically, section 5(a)(1) of the FTC Act declares unfair or deceptive acts or practices in or affecting commerce to be unlawful. Negative option sellers making material misrepresentations are engaged in deceptive practices. Addressing these practices through the Rule prevents deception by giving the Commission the ability to seek civil penalties (where appropriate under 5(m)(1)(a)), where they are not already provided, thus deterring misrepresentations, protecting consumers, and leveling the playing field for “honest sellers who must compete with those who engage in deception.”²⁰⁵

(a) Summary of Comments

The State AGs strongly supported this provision, stating, for example, it would “combat[] seller misrepresentations, by providing the FTC with authority to seek civil penalties and consumer redress for material misrepresentations in all types of media.”²⁰⁶ Echoing the NPRM, they explained, “[l]ike the FTC, we have found that negative option marketing cases ‘often involve deceptive representations not only related to the negative option feature but to the underlying product (or service) or other aspects of the transaction as well.’”²⁰⁷

Law Professors further supported prohibiting “material misrepresentations . . . whether or not the false claim is exclusively about the negative option feature.”²⁰⁸ They, too, offered evidence of the prevalence of misconduct, stating “entities like the Better Business Bureau have long reported, based on FTC and other data, the prevalence of misrepresentation in certain negative option arrangements, and non-FTC enforcement efforts confirm the problem.”²⁰⁹ Citing

No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011); *FTC v. WealthPress, Inc.*, No. 3:23-cv-00046 (M.D. Fla. 2023); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011); *FTC v. Universal Premium Servs.*, No. 2:06-cv-00849 (C.D. Cal. 2006); *FTC v. Remote Response Corp.*, No. 1:06-cv-20168 (S.D. Fla. 2006); and *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. 2016).

²⁰⁵ NPRM, 88 FR 24726.

²⁰⁶ State AGs, FTC-2023-0033-0886.

²⁰⁷ *Id.*

²⁰⁸ Law Professors, FTC-2023-0033-0861.

²⁰⁹ *Id.*, citing Better Business Bureau, “BBB Investigation Update: Free Trial Offer Scams” (Apr. 2020), <https://www.bbb.org/article/news-releases/22040-bbb-update-free-trial-offers-scams>; C. Steven Baker & Better Business Bureau, “Subscription Traps and Deceptive Free Trials Scam Millions with Misleading Ads and Fake Celebrity Endorsements” (Dec. 2018), <https://www.bbb.org/article/investigations/18929-subscription-traps-and>

multiple sources, they argued the “Commission thus has more than ample ‘reason to believe that’ co-occurring negative option violations and other misrepresentations ‘are prevalent.’”²¹⁰

These commenters further argued the Commission should not adopt a narrower provision limited strictly to the elements of a negative option feature because, in their view, it would be difficult “to fully separate misrepresentations regarding the negative option feature from all other material misrepresentations.”²¹¹

Several commenters, largely trade groups and sellers, criticized the proposed provision. As discussed in section V.A, several questioned the prevalence of misrepresentations²¹² and asserted the provision was not within the scope of the ANPR.²¹³ Additionally, several commenters argued the provision is overbroad, and suggested it is unnecessary in light of existing law. Finally, they proposed ways to narrow the proposed provision.

Several commenters objected to the scope of the proposed provision. Citing Commissioner Wilson’s dissent to the NPRM, TechNet noted the proposed Rule “would capture alleged misrepresentations regarding the underlying product or service ‘wholly unrelated’ to the negative option feature.”²¹⁴ Three commenters asserted no current trade regulation rule

deceptive-free-trialscam-millions-with-misleading-ads-and-fake-celebrity-endorsements. The Law professors further pointed to evidence found by searching BBB’s ScamTracker for terms like “subscription.” See, e.g., Better Business Bureau, ScamTracker, ID #720953, <https://www.bbb.org/scamtracker/lookupsam/720953>. They additionally cited Consumer Financial Protection Bureau, “CFPB Charges TransUnion and Senior Executive John Danaher with Violating Law Enforcement Order” (Apr. 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-charges-transunion-and-seniorexecutive-john-danaher-with-violating-law-enforcement-order/>; David Pierson, “Santa Monica fitness brand Beachbody is fined \$3.6 million over automatic renewals,” L.A. Times (Aug. 29, 2017), <https://www.latimes.com/business/la-fi-beachbody-20170829-story.html>; Bruce A. Craig, Negative-Option Billing—Understanding the Stealth Scams of the ‘90s, 7 Loy. Consumer L. Rev. 5 (1994).

²¹⁰ Law Professors, FTC-2023-0033-0861.

²¹¹ Law Professors, FTC-2023-0033-0861.

²¹² CTA, FTC-2023-0033-0997; ESA, FTC-2023-0033-0867; IAB, FTC-2023-0033-1000; N/MA, FTC-2023-0033-0873; RILA, FTC-2023-0033-0883; TechFreedom, FTC-2023-0033-0872. See section VII.A for a discussion of prevalence addressing these comments.

²¹³ ANA, FTC-2023-0033-1001; CCIA, FTC-2023-0033-0984; Coalition, FTC-2023-0033-0884; ESA, FTC-2023-0033-0867; Frontdoor, FTC-2023-0033-0862; IAB, FTC-2023-0033-1000; NRF, FTC-2023-0033-1005; RILA, FTC-2023-0033-0883. See section VII.A for a discussion addressing these comments.

²¹⁴ TechNet, FTC-2023-0033-0869.

²⁰⁰ NFIB, FTC-2023-0033-0789.

²⁰¹ Further, as explained in n.307, the Commission also declines to revise the definition of “clear and conspicuous” to replace the words “diction and syntax” with “words and grammar.”

²⁰² NPRM, 88 FR 24734.

²⁰³ NPRM, 88 FR 24726.

²⁰⁴ *Id.* (citing e.g., *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *United States v. MyLife.com, Inc.*, No. 2:20-cv-6692 (C.D. Cal. 2020); *FTC v. Health Rsch. Labs., LLC*,

prohibits misrepresentations so broadly.²¹⁵

Similarly on scope, some commenters also argued the proposed language lacked the specificity necessary to give sellers notice of what conduct would violate the Rule.²¹⁶ For example, ACT App Association asserted, “Notwithstanding best efforts, tech startups’ ability to flawlessly adhere to the vague and broad language used in this rule is unrealistic.”²¹⁷

A few commenters provided hypotheticals or asked rhetorical questions to illustrate concerns about the proposal’s breadth. MIA, for example, stated, “if a streaming service advertises, ‘movies that you will love,’ but you do not ‘love’ them, is that a violation of this rule subject to penalties? If a housekeeping service claims, ‘great cleaning every time,’ but the resulting cleanliness is not up to the consumer’s ‘standards,’ will that trigger this provision and any resulting penalties?”²¹⁸ The Chamber asked, “[c]ould a privacy policy, for example, be considered a material representation covered under this requirement?”²¹⁹

Many of these commenters argued the reach of the proposed Rule would negatively impact consumers by discouraging negative option offerings. TechNet said, “[f]or a variety of subscription services, the main drivers of consumer engagement are the subscription services’ ability to provide financial savings, convenience, and access to premium services. . . . Unfortunately, the NPRM ignores these benefits and would discourage the offering of subscription services altogether.”²²⁰ ESA feared “this section will discourage industry members from developing and offering innovative

negative option plans that consumers will enjoy.”²²¹

Several commenters asserted existing laws and regulations make the proposed provision unnecessary. Some argued section 5’s prohibition against deceptive practices already provides the Commission sufficient authority on this issue.²²² Others asserted State laws and regulations prohibiting misrepresentations are sufficient to protect the public.²²³

Commenters were divided on ROSCA’s coverage. NRF, for example, said “[i]n light of the Commission’s decision that ROSCA already prohibits deceptive statements made in connection with a subscription, even if not directly related to subscription terms, many of the proposed amendments are unnecessary.”²²⁴ In contrast, PDMI said while *MoviePass* “perhaps reflects a colorable approach,” the application of ROSCA there “exceeded Congress’ intent.”²²⁵ Similarly, IAB asserted the proposed Rule would break new ground by “grant[ing] the Commission authority to seek monetary remedies against a first-time offender for misrepresentations that would not give rise to monetary relief if made outside the context of an autorenewal agreement.”²²⁶

Several commenters recommended changes if the proposed provision remains in the Rule. BSA, for example, suggested the Commission should define the term “material,” citing the TSR and the FTC Policy Statement on Deception as examples.²²⁷ Separately, RILA urged the Commission “to include clear language stating a ‘reasonable person standard’ will apply to determinations of ‘material facts’ related to products.”²²⁸

Several commenters suggested the Commission limit the misrepresentation

provision to the terms of the negative option feature. For instance, BSA advocated for limiting the provision “to facts relating to the transaction and not every material fact relating to the underlying good or service.”²²⁹ CCIA and CDI agreed, stating the final phrase should instead cover only those material facts related to the underlying negative option feature and exclude “any material fact related to the underlying good or service.”²³⁰

(b) Analysis

Based on the record, the Commission adopts a clarified version of the material misrepresentation section and adds a definition for further clarification. Specifically, the final Rule omits the proposed language referring to “any material fact related to the transaction, such as the negative option feature, or any material fact related to the underlying good or service” and instead prohibits misrepresentation of “any material fact,” and defines “material” consistent with the TSR and section 5 of the FTC Act. Further, to enhance clarity and specificity, the text lists several examples of potentially material fact categories, taken from Commission precedent.

As further explained below: (1) despite commenters’ concerns to the contrary, this provision is consistent with the ANPR and prevalence requirements of section 18 of the FTC Act; (2) consistent with ROSCA, the final provision is not limited to material misrepresentations about the negative option feature itself; (3) the Commission declines to exclude any subset of material misrepresentations from the scope of the Rule; and (4) for clarity, the Commission adds a definition of “material” consistent with established law of section 5 and other Commission Rules.

(1) *Adoption of a prohibition against misrepresentations is consistent with the ANPR and is appropriate to address prevalent unfair or deceptive acts or practices.*

Prior to the publication of any notice of proposed rulemaking promulgated under the Magnuson Moss Act, the Commission must publish an advance notice of proposed rulemaking (ANPR).²³¹ That notice must contain a “brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives

²¹⁵ NCTA, FTC–2023–0033–0858; PDMI, FTC–2023–0033–0864; TechFreedom, FTC–2023–0033–0872.

²¹⁶ For example, the Coalition and IAB both said, “The NPRM fails, however, to identify which claims would constitute a material fact, and thus fails to identify covered acts with the requisite level of specificity.” Coalition, FTC–2023–0033–0884; IAB, FTC–2023–0033–1000. PDMI similarly claimed the proposed provision’s lack of specificity “renders [the proposed Rule] overly vague and unlawful.” FTC–2023–0033–0864. *See also* ESA, FTC–2023–0033–0867; TechFreedom, FTC–2023–0033–0872; USTelecom, FTC–2023–0033–0876 (citing *Katharine Gibbs School v. FTC*, 612 F.2d 658 (2d Cir. 1979)).

²¹⁷ ACT App Association, FTC–2023–0033–0874.

²¹⁸ MIA, FTC–2023–0033–1008.

²¹⁹ Chamber, FTC–2023–0033–0885. *See also* CDI, FTC–2023–0033–0887 (“consumers could argue that the dish detergent they received through a subscription service did not clean dishes as advertised.”).

²²⁰ TechNet, FTC–2023–0033–0869.

²²¹ ESA, FTC–2023–0033–0867; *see also* IAB, FTC–2023–0033–1000 (predicting “autorenewing (sic) subscriptions will become less common and significantly more costly because of the regulatory risks” and “businesses and consumers will be harmed by the loss of convenience and savings offered by autorenewal arrangements.”); Chamber, FTC–2023–0033–0885 (contending “many entities may forgo negative options altogether. This decreases consumer choice in the marketplace given the clear popularity and use of negative option features across the economy.”).

²²² ANA, FTC–2023–0033–1001; Consumer Technology Association (“CTA”), FTC–2023–0033–0997; N/MA, FTC–2023–0033–0873.

²²³ NRF, FTC–2023–0033–1005; RILA, FTC–2023–0033–0883; SFE Energy, Inc. (“SFE”), FTC–2023–0033–1151.

²²⁴ NRF, FTC–2023–0033–1005.

²²⁵ PDMI, FTC–2023–0033–0864.

²²⁶ IAB, FTC–2023–0033–1000.

²²⁷ BSA, FTC–2023–0033–1015; *see also* Chamber, FTC–2023–0033–0885 (noting “materiality” not defined in NPRM).

²²⁸ RILA, FTC–2023–0033–0883.

²²⁹ BSA, FTC–2023–0033–1015.

²³⁰ CCIA, FTC–2023–0033–0984; CDI, FTC–2023–0033–0887; *see also* TechFreedom, FTC–2023–0033–0872.

²³¹ 15 U.S.C. 57a(b)(2).

under consideration by the Commission.”²³² The ANPR in this case meets this standard. Specifically, in the ANPR, the Commission stated the objective of the Rule was to prevent deceptive or unfair practices in the marketing of products and services with negative option features. Several industry associations submitted comments in response to the ANPR, illustrating the effectiveness of the ANPR in soliciting views of the interested public and affected industry before issuing the NPRM.²³³ Moreover, as detailed herein, the Commission has reviewed and carefully considered the views of the public and industry as expressed in response to both the ANPR and NPRM.

The record demonstrates misrepresentations made to induce consumers to enter into negative option programs are prevalent. Specifically, the Commission’s enforcement experience (including consumer complaints, matters cited in the NPRM, and matters cited in this Statement of Basis and Purpose) as well as the experiences of the State AGs, the information cited by the Law Professors, and comments by consumer commenters all support this conclusion.²³⁴

As several commenters critical of the proposed provision correctly note, misrepresentations to induce consumers to join negative option programs are already unlawful under section 5, as well as under other State and Federal laws and regulations, depending on (among other things) media used and jurisdiction. This fact, however, does not undermine the need for the Rule provision. By definition, a section 18 trade regulation rule addresses conduct that is already prohibited under section 5. With such prohibited conduct defined, the trade regulation rule may also more broadly “include requirements prescribed for the purpose of preventing such acts or practices,” but the core of a trade regulation rule is the description of acts or practices already violative of section 5.²³⁵ The misrepresentations section of the Rule is narrower than the full scope of tools available under section 18. It simply

prohibits conduct that is already deceptive. Such a provision promotes clarity and confidence in the marketplace and provides for more effective remedies (*i.e.*, civil penalties, where appropriate) against wrongdoers.

Moreover, the fact that ROSCA’s disclosure requirement²³⁶ already essentially prohibits material misrepresentations about online negative option transactions, means much of the rhetoric predicting the downfall of negative option marketing simply is ill-founded. Indeed, the Chamber pointed to the “clear popularity and use of negative option features across the economy” even as ROSCA has been law for over a decade.²³⁷ Far from undermining legitimate business, the Rule’s express prohibition on misrepresenting material facts in connection with promoting or offering for sale a negative option feature should increase consumer confidence in negative option marketing, thus making it easier for legitimate businesses to market their products.

(2) Prohibiting misrepresentation of any material facts, not just those pertaining to the negative option feature, promotes clarity consistent with ROSCA and Commission precedent.

The final Rule prohibits misrepresentation of “any material fact.” In doing so, it provides a non-exhaustive list of categories of potentially material facts (including transaction terms) and adds a definition of “material,” consistent with section 5 and the TSR. Specifically, consistent with section 5, “material” means “likely to affect a person’s choice of, or conduct regarding, goods or services.”²³⁸ This approach both clarifies the terms most at issue and ensures the Rule accords with longstanding section 5 precedent.

The Commission declines to limit the misrepresentations prohibition solely to elements of the negative option feature.²³⁹ First, the Commission finds imposing such a narrow restriction would be inconsistent with existing protections. Pursuant to ROSCA section 8403, sellers must “clearly and conspicuously disclose all material

terms of the transaction before obtaining the consumer’s billing information.” As Congress has explained, a healthy marketplace “must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers’ business.”²⁴⁰ Limiting a misrepresentations prohibition solely to misrepresentations about the negative option feature itself would fall well short of the scope of ROSCA and the Commission’s responsibility to protect the public.

Moreover, seller commenters themselves highlighted transaction elements other than negative option terms as critical to inducing consumers to choose negative option features. IAB, for example, pointed to the promise of “broader selection and lower prices” or “convenience and savings.”²⁴¹ Similarly, TechNet identified the “ability to provide financial savings, convenience, and access to premium services” as “the main drivers” of varied subscriptions.²⁴²

Furthermore, such a distinction may invite dishonest actors to misrepresent material facts about a transaction so long as they felt they could evade monetary liability for such misrepresentations. Moreover, simply refraining from making material misrepresentations is hardly a significant burden given the fact that such misrepresentations are already illegal under section 5 of the FTC Act, and subject to civil penalties when made on the internet and over the telephone pursuant to ROSCA and the TSR, respectively.

(3) The Commission declines to exclude any material facts from the scope of the provision.

To further promote clarity, the Commission includes a list of non-exclusive examples in the text of § 425.3. In addition to the negative option feature itself, the examples include certain characteristics the Commission has identified as presumptively material for more than 40 years²⁴³ and which have in fact appeared as the subject of material misrepresentations in Commission negative option cases—cost,²⁴⁴ purpose

²³² 15 U.S.C. (b)(2)(A)(i).

²³³ Section 425.3 is the only remaining section as to which commenters made this ANPR argument.

²³⁴ See section VII.1.a. In the cited Commission law enforcement matters, the Commission has applied its established materiality standard, limiting its actions to misrepresentations that are likely to affect consumers’ choice of, or conduct regarding, goods or services. *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984). That is to say, in the cited matters the Commission alleged defendants made misrepresentations to induce consumers to enter into negative option programs.

²³⁵ 15 U.S.C. 57a(a)(1)(B).

²³⁶ 15 U.S.C. 8403(1).

²³⁷ Chamber, FTC–2023–0033–0885.

²³⁸ 16 CFR 310.2(t) (TSR); 16 CFR 461.1 (Impersonation Rule); Policy Statement on Deception (Oct. 14, 1983) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)). See also BSA, FTC–2023–0033–1015 (requesting definition of material consistent with TSR and Policy Statement); Chamber, FTC–2023–0033–0885 (criticizing the proposed Rule for not defining materiality).

²³⁹ *E.g.*, ESA, FTC–2023–0033–0867; NFIB, FTC–2023–0033–0789; TechFreedom, FTC–2023–0033–0872.

²⁴⁰ 15 U.S.C. 8401(2).

²⁴¹ IAB, FTC–2023–0033–1000.

²⁴² TechNet, FTC–2023–0033–0869.

²⁴³ Policy Statement on Deception (Oct. 14, 1983) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)) (describing and citing materiality of purpose, safety, efficacy, and cost); *In re Thompson Medical Co., Inc.*, 104 F.T.C. 648, 816–17 (1984) (listing cost, purpose, efficacy, and safety as presumptively material characteristics).

²⁴⁴ In the negative option context, material cost misrepresentations may include any cost (and total

or efficacy,²⁴⁵ and health or safety.²⁴⁶ The record demonstrates the list must be non-exclusive because the Commission has observed the use of material misrepresentations other than those enumerated to induce consumers to enter into transactions with negative option features, including, for example, characteristics of the seller,²⁴⁷ the format of the ad or other sales communication,²⁴⁸ consumer

costs) from inception through the course of the commercial relationship, including misrepresentations as to recurring costs and refunds or guarantees. *See, e.g., FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024); *United States v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023); *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-01794 (M.D. Fla. 2022); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018); *FTC v. Health Rsch. Labs., LLC*, No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. Pact, Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011); *FTC v. Universal Premium Servs.*, No. 2:06-cv-00849 (C.D. Cal. 2006).

²⁴⁵ *See, e.g., FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024); *United States v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024); *FTC v. NGL Labs, LLC*, No. 2:24-cv-05753 (C.D. Cal. 2024); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023); *FTC v. WealthPress, Inc.*, No. 3:23-cv-00046 (M.D. Fla. 2023); *In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022); *In re MoviePass, Inc.*, FTC Docket No. C-4751 (2021); *United States v. MyLife.com, Inc.*, No. 2:20-cv-6692 (C.D. Cal. 2020); *FTC v. RagingBull.com, LLC*, No. 1:20-cv-03538 (D. Md. 2020); *FTC v. Match Grp., Inc.*, No. 3:19-cv-02281 (N.D. Tex. 2019); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014); *FTC v. Credit Bureau Ctr., LLC*, No. 1:17-cv-00194 (N.D. Ill. 2017); *FTC v. Health Rsch. Labs., LLC*, No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011); *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. 2010); *FTC v. Remote Response Corp.*, No. 1:06-cv-20168 (S.D. Fla. 2006).

²⁴⁶ *See, e.g., FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018); *FTC v. Health Rsch. Labs., LLC*, No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011).

²⁴⁷ *E.g., FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-00125 (D. Utah 2019) (affiliation with well-known companies); *In re Urthbox, Inc.*, FTC Docket No. C-4676 (2019) (independence of reviews); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015) (BBB accreditation and ratings); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186 (S.D. Fla. 2016) (ratings); *FTC v. FTN Promotions, Inc.*, No. 8:07-cv-1279 (M.D. Fla. 2007) (affiliation with consumer's bank).

²⁴⁸ *E.g., FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017) (radio news show); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011) (news reports).

authorization,²⁴⁹ consumer privacy or data security,²⁵⁰ and endorsements or testimonials.²⁵¹ The Commission cannot predict what other material misrepresentations dishonest actors may employ in the future.

Some commenters asserted section 18 does not authorize the Commission to prohibit material misrepresentations in a given area of commerce. Section 18, however, permits the FTC to promulgate “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce [within the meaning of [section 5(a)(1)]] . . . [and] may include requirements prescribed for the purpose of preventing such acts or practices.”²⁵² It places no additional restrictions on the scope of this rulemaking.

Several commenters appear to think section 18 requires the Commission to define specific claims as deceptive; for example, two commenters cited the Business Opportunity Rule’s treatment of misrepresentations.²⁵³ While the cited Rules show one way to meet the statute’s specificity requirements, the statute does not require the Commission to define *claims* with specificity, but instead *acts or practices*.²⁵⁴ For example, in the Business Opportunity Rule, the practice of misrepresenting “any material aspect of any assistance offered to a prospective purchaser” in a business opportunity transaction is a specific type of deceptive practice in or affecting commerce.²⁵⁵ By the same token, the practice of misrepresenting

²⁴⁹ *E.g., In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022) (charging for same product consumer previously purchased); *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-01794 (M.D. Fla. 2022) (charging for authorized products); *FTC v. Triangle Media Corp.*, No. 3:18-cv-01388 (S.D. Cal. 2018) (completeness of order); *FTC v. Apex Capital Grp., LLC*, No. 2:18-cv-09573 (C.D. Cal. 2018) (completeness of order); *FTC v. MoneyMaker*, No. 2:11-cv-00461 (D. Nev. 2011) (purpose of authorization).

²⁵⁰ *E.g., United States v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024) (data security and privacy); *In re MoviePass, Inc.*, FTC Docket No. C-4751 (2021) (data security).

²⁵¹ *E.g., FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011).

²⁵² 15 U.S.C. 57a(a)(1)(B).

²⁵³ PDMI, FTC-2023-003-0864 (contrasting the proposed Rule language with Business Opportunity Rule language, saying “The Business Opportunity Rule does not prohibit any misrepresentation in connection with business opportunities. It prohibits specific misrepresentations about earnings claims.”); TechFreedom, FTC-2023-0033-0872 (“For example, the Business Opportunity Rule prohibits no fewer than 21 different kinds of misrepresentation regarding business opportunities. This specificity is typical of trade regulation rules.”) (footnotes omitted).

²⁵⁴ 15 U.S.C. 57a(a)(1)(B).

²⁵⁵ 16 CFR 437.6(i).

material facts to induce consumers to consent to negative option features constitutes a specific type of deceptive practice.

The record, including the submissions of many industry commenters, shows negative option features are found across industries, but are consistently distinguishable as a subset of general commercial practices. As commenters point out, negative option features offer many distinct benefits to consumers and sellers. These benefits do not lose their distinct character merely because they occur across different kinds of goods and services sold across different channels. While the record shows this practice offers distinct benefits, it also shows the practice is plagued by distinct abuse. This is not a hypothetical statement; the Commission is not promulgating the final Rule because negative option features may engender deception, whether relating to the feature itself or to other material facts, but rather because the record shows they have.²⁵⁶ Just as with the benefits of

²⁵⁶ *See, e.g., FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024); *United States v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024); *FTC v. NGL Labs, LLC*, No. 2:24-cv-05753 (C.D. Cal. 2024); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023); *FTC v. WealthPress, Inc.*, No. 3:23-cv-00046 (M.D. Fla. 2023); *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-01794 (M.D. Fla. 2022); *In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022); *In re MoviePass, Inc.*, FTC Docket No. C-4751 (2021); *United States v. MyLife.com, Inc.*, No. 2:20-cv-6692 (C.D. Cal. 2020); *FTC v. RagingBull.com, LLC*, No. 1:20-cv-03538 (D. Md. 2020); *FTC v. Match Grp., Inc.*, No. 3:19-cv-02281 (N.D. Tex. 2019); *FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-00125 (D. Utah 2019); *In re Urthbox, Inc.*, FTC Docket No. C-4676 (2019); *FTC v. Triangle Media Corp.*, No. 3:18-cv-01388 (S.D. Cal. 2018); *FTC v. Apex Capital Grp., LLC*, No. 2:18-cv-09573 (C.D. Cal. 2018); *FTC v. XXL Impressions, LLC*, No. 1:17-cv-00067 (D. Me. 2017); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014); *FTC v. Credit Bureau Ctr., LLC*, No. 1:17-cv-00194 (N.D. Ill. 2017); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015); *FTC v. DOTAuthority.com, Inc.*, No. 0:16-cv-62186 (S.D. Fla. 2016); *FTC v. Health Rsch. Labs., LLC*, No. 2:17-cv-00467 (D. Me. 2017); *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. Pact, Inc.*, No. 2:17-cv-1429 (W.D. Wash. 2017); *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017); *FTC v. AAFE Prods. Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014); *FTC v. Dill*, No. 2:16-cv-00023 (D. Me. 2016); *FTC v. Leanspa, LLC*, No. 3:11-cv-01715 (D. Conn. 2011); *FTC v. Willms*, No. 2:11-cv-00828 (W.D. Wash. 2011); *FTC v. MoneyMaker*, No. 2:11-cv-00461 (D. Nev. 2011); *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev. 2010); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975 (N.D. Cal. 2010); *FTC v. JAB Ventures, LLC*, No. 2:08-cv-04648 (C.D. Cal. 2008); *FTC v. Ultralife Fitness, Inc.*, No. 2:08-cv-07655 (C.D. Cal. 2008); *FTC v. FTN Promotions, Inc.*, No. 8:07-cv-1279 (M.D. Fla. 2007); *FTC v. Think All Publ'g, LLC*, No. 4:07-cv-00011 (E.D. Tex. 2007); *FTC v. Hispano, Inc.*, No. 1:06-cv-424 (E.D. Va. 2006); *FTC v. Universal Premium Servs.*, No. 2:06-cv-00849 (C.D. Cal. 2006).

negative option marketing, these problems do not lose their distinct character, in other words they are distinct practices, even though they appear in a variety of contexts.

In addressing this deceptive practice, the Commission remains guided by core principles articulated in its 1983 Deception Policy Statement. As the Commission explained, in considering whether to act against a deceptive practice, the Commission will observe the extent to which consumers themselves have been able to police and generate consequences for seller deception.

Finally, as a matter of policy, when consumers can easily evaluate the product or service, it is inexpensive, and it is frequently purchased, the Commission will examine the practice closely before issuing a complaint based on deception. There is little incentive for sellers to misrepresent (either by an explicit false statement or a deliberate false implied statement) in these circumstances since they normally would seek to encourage repeat purchases. Where, as here, market incentives place strong constraints on the likelihood of deception, the Commission will examine a practice closely before proceeding.²⁵⁷

The record shows the practice of misrepresenting material facts to induce consent to negative option features has created distinct issues consumers have not been able to address themselves, enabling sellers to collect numerous recurring payments before consumers detect the misrepresentation and act to stop the charges. This problem is not confined to a particular subset of industries or misrepresentations but instead is a too-frequent practice throughout negative option marketing.²⁵⁸ Specifically, when a consumer makes a series of purchases from the same seller in ordinary circumstances (rather than through a negative option), each purchase requires the consumer to actively, even if only briefly, re-evaluate the transaction and affirmatively consent. Dishonest negative option sellers too easily bypass these typical guardrails of “repeat purchases.” Thus, up-front misrepresentations can induce consumers into recurring transactions lacking ordinary sales’ built-in interruptions for re-evaluation and renewed consent. As with other areas where consumers have limited opportunities for critical up-front evaluation (for example, consumers

cannot easily evaluate medical claims about dietary supplements), so too, here, the Commission finds additional protection warranted.

The Commission has considered commenters’ section 18 specificity concerns pertaining to material misrepresentations and finds them unsupported by the record. These commenters suggest a hypothetical world where negative option features provide distinguishable commercial benefits without presenting distinguishable material misrepresentation challenges. The reality is otherwise. Thus, the final Rule prohibits the specific practice of sellers misrepresenting material terms or facts in connection with negative option sales.

(4) For clarity, the final Rule adds a definition of “material” consistent with precedent.

As noted above, and as suggested by commenters, the Commission defines “material” in the final Rule. This definition adds clarity and addresses the rhetorical questions raised by commenters regarding scope. Specifically, consistent with section 5, the TSR, and longstanding Commission policy and case law, the final Rule defines the term to mean likely to affect a person’s choice of, or conduct regarding, goods or services.²⁵⁹ Thus, mere puffery is not material.²⁶⁰

The hypotheticals posed by MIA—“movies that you will love” or “great cleaning every time”—are classic examples of puffery, and thus, are not within the scope of materiality.²⁶¹ The response to the question posed by the Chamber—whether misrepresentation of a privacy policy would be covered—depends, as it always has, on whether the seller misrepresents its privacy policy in a way likely to affect consumer choice or conduct.

4. Proposed § 425.4 Important Information

Section 425.4 of the proposed Rule prohibited sellers from failing to disclose “any material conditions related to the underlying product or service that is necessary to prevent

deception, regardless of whether that term directly relates to the terms of the negative option offer.”²⁶² As explained in the NPRM, the Commission drafted this provision because “many sellers fail to provide adequate disclosures, thereby luring consumers into purchasing goods or services they do not want.”²⁶³ To address this issue, the proposed Rule required sellers to provide the following important information prior to obtaining a consumer’s billing information: “(1) that consumers’ payments will be recurring, if applicable; (2) the deadline by which consumers must act to stop charges; (3) the amount or ranges of costs consumers may incur; (4) the date the charge will be submitted for payment; and (5) information about the mechanism consumers may use to cancel the recurring payments.”²⁶⁴

The Commission also proposed requirements regarding the form and location of this important information, as its “law enforcement experience and consumer complaints are replete with examples of hidden disclosures, including those in fine print, buried in paragraphs of legalese and sales pitches, and accessible only through hyperlinks.”²⁶⁵ Thus, under the proposed Rule, information “directly related to the negative option feature . . . must appear immediately adjacent to the means of recording the consumer’s consent for the negative option feature.” Information “not directly related to the negative option feature . . . must appear before consumers make a decision to buy (e.g., before they ‘add to shopping cart’).”

Further, the proposal stated all disclosures must be clear and conspicuous as defined in § 425.2(c). Among other elements of the clear and conspicuous definition, the proposed Rule specified that in any communication using an interactive electronic medium, such as the internet, mobile application, or software, the disclosure must be unavoidable. The proposed Rule also specified that a disclosure is not clear and conspicuous if a consumer “must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.”

Finally, the proposed Rule prohibited sellers from including any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the required disclosures. The final clause of this prohibition “includ[ed] any

²⁵⁹ 16 CFR 310.2(t); *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

²⁶⁰ See *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 11 (1st Cir. 2010) (“Where a claim is merely ‘exaggerated advertising, blustering, and boasting upon which no reasonable buyer would rely,’ it may be un-actionable puffery.”).

²⁶¹ The Commission declines to add language defining a “reasonable person standard” as suggested by RILA, and refers instead to the discussion of reasonableness set forth in the Commission’s Policy Statement on Deception (Oct. 14, 1983) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)).

²⁶² NPRM, 88 FR 24727.

²⁶³ NPRM, 88 FR 24726–27.

²⁶⁴ NPRM, 88 FR 24726.

²⁶⁵ NPRM, 88 FR 24727.

2006); *FTC v. Remote Response Corp.*, No. 1:06-cv-20168 (S.D. Fla. 2006).

²⁵⁷ Policy Statement on Deception (Oct. 14, 1983) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)).

²⁵⁸ See n.257.

information not directly related to the material terms and conditions of any negative option feature.”

Through these provisions, the Commission sought to prevent deception by businesses taking advantage of the gray areas in current law, to deter fraudulent actors through the possibility of monetary relief, and to “level the playing field for legitimate businesses, freeing them from having to compete against those employing deception.”²⁶⁶

(a) Summary of Comments

Thousands of commenters supported the important information requirement, stating it is “critically important that companies make it explicitly clear what consumers are signing up for.”²⁶⁷ Consumers identified problematic practices the provision would address, including insufficient and unclear disclosures in small print or those appearing too late in the transaction. For example, an individual commenter said, “[t]oo many [sellers] hide these details in extra fine print, and increasingly text is in a very light gray color, making it even harder to read.”²⁶⁸ Another individual commenter noted, “I ordered skin care from a tv infomercial only to find out it was a subscription thing though none of this was disclosed by famous actresses on the promotion. . . . I went back to my receipt of what I originally ordered and in fine print saw that I had been duped!”²⁶⁹

Several individual commenters indicated clear upfront disclosures would help them make informed choices and improve their willingness to try negative option offerings, particularly if the disclosure provided an easy cancellation mechanism. As one put it, “I am much more like[ly] to try—and buy—a new service if I know there

is an easy way to cancel online.”²⁷⁰ Another said, “I actually subscribe to far fewer services than I would if I knew that I could easily cancel once I had tried a sample.”²⁷¹

Public advocacy commenters also supported the provision. The Berkeley Consumer Law Center said, “the requirement of ‘clear and conspicuous’ disclosures of ‘any material term related to the underlying goods or services that is necessary to prevent deception’ will help prevent cancellation terms from being shrouded in mystery through complicated terms and conditions, while also blocking the practice of hiding subscription services that are needed to fully use a product.”²⁷² Similarly, a coalition of consumer and public interest advocacy organizations asserted the proposed disclosure requirement “will clearly inform consumers of the terms of the contract and how they may terminate the agreement.”²⁷³

Law enforcement commenters likewise supported the important information requirements. The State AGs said they would “repel the abusive practices of hidden disclosures, ‘including those in fine print, buried in paragraphs of legalese and sales pitches, and accessible only through hyperlinks.’”²⁷⁴ They particularly emphasized their support for “the required disclosure of ‘the information necessary for the consumer to cancel the negative option feature.’”²⁷⁵ The California Auto-Renew Task Force (“CART”), a group of Southern California prosecutors, supported

disclosures appearing “immediately adjacent to the means of recording the consumer’s consent for the negative option feature.”²⁷⁶ CART asserted this provision, together with others, “will greatly minimize consumer deception and ensure that consumers fully understand—and agree to—the nature of the transaction under consideration.”²⁷⁷

Other commenters, mostly industry groups,²⁷⁸ expressed several concerns with the proposed requirements, specifically with the definition of “clear and conspicuous,” the scope and timing of the material terms to be disclosed, specific disclosure requirements, placement, and treatment of other information.²⁷⁹

Multiple commenters claimed the requirement that disclosures using an interactive electronic medium must be “unavoidable” would be unworkable given the additional provision that a “disclosure is not clear and conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.”²⁸⁰ Commenters noted it would be difficult or impossible to implement this requirement on small screens (such as mobile phones), and it may reduce rather than improve clarity.

Several commenters also objected to the requirement sellers disclose material terms other than those pertaining exclusively to the negative option feature, asserting this would be overbroad.²⁸¹ Additionally, commenters questioned how the Commission would enforce a requirement to disclose material terms before obtaining a

²⁷⁶ CART, FTC–2023–0033–0698.

²⁷⁷ *Id.*

²⁷⁸ Not all industry groups criticized the provision. Specifically, MIA wrote, “The Association agrees with the important information requirement under the proposed Rule.” MIA, FTC–2023–0033–1008.

²⁷⁹ In addition, some commenters cited industry-specific laws and regulations pertaining to disclosures as rendering the proposed provision unnecessary or counterproductive. ACA Connects-America’s Communications Association (“ACA”), FTC–2023–0033–0881; NCTA, FTC–2023–0033–0858; SFE, FTC–2023–0033–1151; USTelecom, FTC–2023–0033–0876.

²⁸⁰ ANA, FTC–2023–0033–1001; CCIA, FTC–2023–0033–0984; Coalition, FTC–2023–0033–0884; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; NCTA, FTC–2023–0033–0858; Chamber, FTC–2023–0033–0885. NFIB suggested the Commission strike the provision “The disclosure must use diction and syntax understandable to ordinary consumers” and replace it with “The disclosure must use words and grammar that ordinary consumers would likely understand.” FTC–2023–0033–0789.

²⁸¹ ACT App Association, FTC–2023–0033–0874; ANA, FTC–2023–0033–1001; BSA, FTC–2023–0033–1015; CCIA, FTC–2023–0033–0984; NCTA, FTC–2023–0033–0858; NFIB, FTC–2023–0033–0789; NRF, FTC–2023–0033–1005; PDMI, FTC–2023–0033–0864; Sirius XM, FTC–2023–0033–0857; Chamber, FTC–2023–0033–0885.

²⁶⁶ NPRM, 88 FR 24727.

²⁶⁷ Thousands of consumers submitted the following identical comment in their own names: “It’s critically important that companies make it explicitly clear what consumers are signing up for and to make canceling fast and easy. If you signed up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel. Implementing this consumer protection rule has the potential to save American consumers millions of dollars and I hope it is implemented as soon as possible.” While apparently a response to a mass solicitation, many consumers further personalized their submission by adding their unique experiences and desire for the Rule. *See, e.g.*, Individual commenter, FTC–2023–0033–0161; –0163; –0164; 0198; –0204; –0545; 0658.

²⁶⁸ Individual commenter, FTC–2023–0033–0268. Similarly, another individual commenter said, “Businesses should not present agreements in tiny print on an agent’s tablet for the customer to sign. I can’t read the print.” Individual commenter, FTC–2023–0033–0349.

²⁶⁹ Individual commenter, FTC–2023–0033–0345.

²⁷⁰ Individual commenter, FTC–2023–0033–0781.

²⁷¹ Individual commenter, FTC–2023–0033–0031. Accord Individual commenter, 0196 (“I have had to get to the point of not subscribing to any online offers, as far too many times I have found it nearly impossible to unsubscribe”); Individual commenter, FTC–2023–0033–0306 (“you could win over more subscribers to your services if you took away the fear and doubts of the public that they will probably be hooked into something that would be more troublesome to get out of. . . . I can tell you that I have passed over many opportunities that I was interested in for this very reason.”); Individual commenter, FTC–2023–0033–0333 (“I’ve had some difficulty in the past cancelling enrollments or subscriptions, so that now I’ve become very wary of products or services I would otherwise appreciate having. Implementing this consumer protection rule would help me feel more confident again.”).

²⁷² Berkeley Consumer Law Center, FTC–2023–0033–0855. Similarly, for the same reasons they provided in connection with the misrepresentations provision, the Law Professors encouraged the Commission to maintain the proposed disclosure provision’s coverage of material terms necessary to prevent deception, regardless of whether such terms are exclusively about the negative option feature. Law Professors, FTC–2023–0033–0861.

²⁷³ Public Interest Groups, FTC–2023–0033–0880.

²⁷⁴ State AGs, FTC–2023–0033–0886.

²⁷⁵ *Id.*

consumer's billing information, especially where a consumer previously elected to save billing information with the seller.²⁸² Commenters also found the requirement that material terms “not directly related to the negative option feature . . . must appear before consumers make a decision to buy” to be vague.²⁸³

Several commenters took issue with the five specific disclosures in the proposed Rule. For example, the requirement to disclose “the date (or dates) each charge will be submitted for payment” drew substantial criticism, with several commenters asserting appropriate disclosures regarding frequency should suffice.²⁸⁴ Commenters also criticized the requirements to disclose deadlines to act and the amount or range of costs.²⁸⁵ A group of direct marketers asserted, for example, “the Proposed Rule goes too far in appearing to require a specific date by which consumers must act to stop charges when certain negative option plans are inherently more flexible and allow consumers to cancel anytime.”²⁸⁶ Commenters also found the requirement to disclose “the information necessary for the consumer to cancel the negative option feature” was vague and impractical. They contended the requirement would result in unnecessary details crowding out other disclosures.²⁸⁷ IAB contended “[a] more effective strategy [regarding cancellation disclosures] would be to make clear but concise disclosures of where that information can be found.”²⁸⁸

Additionally, multiple commenters criticized the provision requiring the placement of material terms “directly related to the negative option feature”

. . . “immediately adjacent” to recording the consumer's consent.²⁸⁹ Commenters asserted having numerous disclosures in a constrained space would impair consumers' ability to make informed choices. As an individual commenter explained, “this important information may still become overwhelming to a user, or challenge the integrity of other disclosures if it must compete for space (especially because this disclosure must be placed immediately adjacent to where a user will consent to the negative option feature).”²⁹⁰ NRF found unclear the distinction between which terms are or are not “directly related to the negative option feature.”²⁹¹ Other commenters noted the “immediately adjacent” requirement may not be appropriate for voice transactions.²⁹²

Finally, one commenter expressed uncertainty about the meaning of the “other information” provision. NRF said it “asks companies to walk a tight rope between ensuring they contain all material terms, while risking liability if they include ‘any information not directly related to the material terms.’”²⁹³

The State AGs also recommended three amendments to this proposal. First, they recommended requiring sellers to “disclose all material policies concerning cancellation.” Second, they recommended “sellers be required to disclose ‘all the information necessary for the consumer to effectively cancel the negative option feature.’” (Emphasis in comment.) They explained, “[d]isclosures in the form of ‘click-here-to-cancel’ icons, which lead to terms and conditions pages, confusing cancellation flows, or do not otherwise explain how to cancel online, should not be permitted.” Third, they recommended “the FTC amend this provision to require that the important information identified by this proposed Rule be provided to the consumer in a

manner that is capable of being retained by the consumer.”²⁹⁴

(b) Analysis

Based on the record, the Commission retains proposed § 425.4 with several clarifications. First, as explained in section VII.B.3 of this SBP, the Commission adds a definition of “material” at § 425.2(e). Second, in § 425.4(a), the Commission clarifies three of the listed types of important information sellers must provide and omits one to address commenters' concerns. Third, as explained in section VII.B.4.b.2 of this SBP, the Commission revises the definition of “clear and conspicuous” in § 425.2(c). Fourth, in § 425.4(b)(2) the Commission clarifies language regarding “placement” of disclosures. Finally, the Commission clarifies the language prohibiting sellers from including “any other information” that “interferes with, detracts from, contradicts, or otherwise undermines” consumers' abilities to read, hear, see, or understand the required disclosures.

(1) *The Commission declines to limit the required important information under § 425.4(a).*

The Commission declines to limit the scope of the required information under this provision to only information related to the negative option feature. Section 425.4(a)'s requirement that sellers disclose “all material terms” prior to obtaining the consumer's billing information is consistent with ROSCA and section 5 of the FTC Act. Moreover, in the Commission's law enforcement experience such a provision is necessary to prevent deception.²⁹⁵ Therefore, extending this requirement is well within the Commission's rulemaking authority.²⁹⁶

To address commenters' concerns about clarity, however, § 425.2(e) adds a definition of “material,” specifically, material means “likely to affect a person's choice of, or conduct regarding, goods or services.”²⁹⁷ This definition is consistent with longstanding section 5 case law and other Commission rules defining “material.”²⁹⁸

²⁸² CTA, FTC–2023–0033–0997; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; NRF, FTC–2023–0033–1005; RILA, FTC–2023–0033–0883. Sirius XM asserted this requirement could be interpreted to mean every advertisement must contain disclosure of all material terms. FTC–2023–0033–0857.

²⁸³ Rebecca Kuehn (“Kuehn”), FTC–2023–0033–0871; NRF, FTC–2023–0033–1005.

²⁸⁴ CCIA, FTC–2023–0033–0984; CTA, FTC–2023–0033–0997; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; NRF, FTC–2023–0033–1005; RILA, FTC–2023–0033–0883; Sirius XM, FTC–2023–0033–0857.

²⁸⁵ IAB, FTC–2023–0033–1000 (deadlines); Comment from Kelley Drye & Warren LLP on behalf of certain direct marketing companies (“Direct Marketing Companies”), FTC–2023–0033–1016 (deadlines); NRF, FTC–2023–0033–1005 (amount or range of costs); Sirius XM, FTC–2023–0033–0857 (amount or range of costs).

²⁸⁶ Direct Marketing Companies, FTC–2023–0033–1016.

²⁸⁷ CCIA, FTC–2023–0033–0984; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; NRF, FTC–2023–0033–1005.

²⁸⁸ IAB, FTC–2023–0033–1000.

²⁸⁹ ANA, FTC–2023–0033–1001; CCLA, FTC–2023–0033–0984; Coalition, FTC–2023–0033–0884; CTA, FTC–2023–0033–0997; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; Direct Marketing Companies, FTC–2023–0033–1016; NRF, FTC–2023–0033–1005; SFE, FTC–2023–0033–1151; Sirius XM, FTC–2023–0033–0857; Chamber, FTC–2023–0033–0885.

²⁹⁰ Individual commenter, FTC–2023–0033–0552.

²⁹¹ NRF, FTC–2023–0033–1005.

²⁹² Coalition, FTC–2023–0033–0884; Chamber, FTC–2023–0033–0885.

²⁹³ NRF, FTC–2023–0033–1005 (emphasis in comment); *see also* Chamber, FTC–2023–0033–0885 (“[T]he [disclosure] requirement is also ambiguous considering it does not clearly outline the specific material terms that need to be disclosed, which is particularly important considering the requirement applies not just to the negative option feature, but all terms in the transaction.”).

²⁹⁴ State AGs, FTC–2023–0033–0886.

²⁹⁵ *See, e.g., In re MoviePass, Inc.*, FTC Docket No. C–4751 (2021).

²⁹⁶ 15 U.S.C. 57a(a)(1)(B).

²⁹⁷ Additionally, the Commission changes “any” to “all” material terms, and deletes the phrase “related to the underlying good or service that is necessary to prevent deception” for clarity. Specifically, the Commission makes clear that sellers are required to disclose all material terms, consistent with the requirements of ROSCA.

²⁹⁸ *See In re Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165 (1984) (misleading impression created by a solicitation is material if it “involves information that is important to consumers and, hence, likely

Additionally, the Commission modifies the proposed list of important information.²⁹⁹ The Commission retains the first proposed requirement that sellers must disclose “[t]hat consumers will be Charged for the good or service, or that those Charges will increase after any applicable trial period ends, and, if applicable, that the Charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such Charges.”³⁰⁰ The Commission continues to find this requirement appropriate to combat deception.

The Commission revises the second proposed disclosure, that sellers provide “the deadline (by date or frequency) by which the consumer must act in order to stop all charges.” As revised, this provision requires sellers to disclose “each deadline (by date or frequency) by which the consumer must act to prevent or stop the Charges.” This change clarifies there may not be a single “deadline” by which a consumer must act to “stop all charges.” A single seller, for example, may offer a single consumer multiple goods or services, and the consumer may wish to stop some charges without terminating the entire relationship. The Commission also clarifies that “frequency” as used in the final Rule includes a description of an irregular frequency (e.g., within a certain period after the seller notifies the consumer a new item in a series has become available) as well as a regular one (e.g., the 15th of each month).

The Commission also clarifies the third proposed disclosure. The proposed Rule required sellers to disclose “[t]he amount (or range of costs) the consumer will be charged, and, if applicable, the frequency of such charges a consumer will incur unless the consumer takes timely steps to prevent or stop those charges.”³⁰¹ The record suggests, however, that in some circumstances, the amounts to be charged may be inexact before the seller

to affect their choice of, or conduct regarding, a product.”); see also *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006); 16 CFR 310.2(t) (TSR); 16 CFR 461.1 (Impersonation Rule); Policy Statement on Deception (Oct. 14, 1983) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984)).

²⁹⁹ In the misrepresentations provision (§ 425.3), the final Rule uses the term “including” to provide examples of categories of potentially material facts. In the disclosures provision, the final Rule retains the proposed Rule’s use of “and including” (rather than just “including”) to establish all of the specifically listed disclosures as being always material.

³⁰⁰ NPRM, 88 FR 24735 (proposed 425.4).

³⁰¹ The final Rule requires sellers to disclose “The amount (or range of costs) the consumer will be Charged and, if applicable, the frequency of the Charges a consumer will incur unless the consumer takes timely steps to prevent or stop those Charges.”

obtains the consumer’s billing information. For example, taxes or delivery fees may depend in part on the billing information the consumer provides. Thus, the Commission clarifies under the final Rule as adopted, the “amount (or range of costs)” need not be exact if an exact figure is impossible, but the seller must give a reasonable approximation. For example, it is within the meaning of “amount (or range of costs)” for a seller to disclose an amount “plus tax” where the seller requires billing information to determine the actual amount of tax. However, a “plus shipping” disclosure may not be sufficient if the amount of shipping is beyond what a consumer would reasonably expect or is greater than the amount a seller would reasonably incur for shipping. In such a circumstance, the seller would need to provide an estimate of shipping costs. These clarifications should address commenters’ concerns about having to disclose an exact cost when doing so is not possible.

The final Rule omits the proposed fourth disclosure: the date (or dates) each charge will be submitted for payment. The Commission is persuaded by commenters’ concern that a specific date or dates may be cumbersome or impossible to calculate. For example, if the seller will submit a charge when it ships a new item in a series, the seller may not be able to predict the specific dates it will submit the charge in the future. In addition, in light of the change to the placement requirements of § 425.4(b)(2)(i), discussed below, including these dates could reduce the clarity and conspicuousness of higher priority adjacent disclosures (especially cancellation deadlines, which will often occur before dates of charges). If, however, disclosure of the date (or dates) each charge will be submitted for payment is necessary to prevent deception in individual cases, such disclosure is required under § 425.4(a). However, its placement is governed by revised § 425.4(b)(2)(ii) rather than § 425.4(b)(2)(i).

Finally, the Commission clarifies the fifth proposed mandatory disclosure (the fourth in the final Rule). The proposed Rule required sellers to disclose “[t]he information necessary for the consumer to cancel the negative option feature”. In contrast, the final Rule requires sellers to disclose “The information necessary for the consumer to find the simple cancellation mechanism required pursuant to § 425.6”. This change addresses commenters’ concern the language of the proposed Rule, combined with the placement requirements of

§ 425.4(b)(2)(i), would result in detailed cancellation disclosures crowding out other important required disclosures.³⁰² This new language should provide consumers with concise critical upfront information about how to cancel, while offering sellers flexibility to avoid obscuring other important information.³⁰³

Some sellers expressed concern regarding the timing of disclosures where a consumer previously elected to save billing information with the seller. To address this concern the Commission now clarifies that, where a consumer has previously provided account information to the seller and expressly allowed the seller to store that information,³⁰⁴ the seller must make the required disclosures prior to obtaining the consumer’s consent to use saved account information.³⁰⁵

(2) *The Commission modifies the requirements of § 425.4(b) to promote clarity.*

Section 425.4(b)(1) provides, “[e]ach disclosure required by paragraph (a) of this section must be clear and conspicuous.” The Commission retains this requirement but revises the definition of clear and conspicuous at § 425.2(c) to address commenters’ concerns regarding space-constrained

³⁰² For example, IAB suggested the Commission should require sellers “to make clear but concise disclosures of where [cancellation] information can be found, so consumers can find that information if and when it is relevant to them.” IAB, FTC–2023–0033–1000.

³⁰³ The Commission declines to adopt the State AGs three suggestions to supplement this section. The Commission expects the final Rule will address two of those suggestions (disclosure of “all material policies concerning cancellation” and of “all the information necessary for the consumer to effectively cancel the negative option feature”) through the requirement that sellers disclose all material terms (§ 425.4), the prohibition of misrepresentations of material facts or terms including those pertaining to cancellation (§ 425.3), and the requirement of a simple cancellation mechanism (§ 425.6). The Commission expects to address the concerns underlying their third suggestion (“to require that the important information identified by this proposed Rule be provided to the consumer in a manner that is capable of being retained by the consumer”), through its further development of the reminders requirement. In the interim, the Commission expects the Rule provisions as adopted will encourage sellers to make important information easy to find and easy to retain.

³⁰⁴ It is a violation of section 5 for a seller to retain and use a consumer’s payment information without the consumer’s consent. E.g., *FTC v. Classic Closeouts LLC*, No. 2:09–cv–2692 (E.D.N.Y. 2009).

³⁰⁵ See *FTC v. Amazon.com, Inc.*, No. 2:23–cv–00932, 2024 WL 7273812, at *11 (W.D. Wash. May 28, 2024) (“Nothing in ROSCA says that companies . . . may not give consumers the option to autofill the billing information already on file or simply to provide billing information after the disclosures, but ROSCA requires that consumers be given that choice *after* the disclosures.”) (emphasis in original).

disclosures.³⁰⁶ Specifically, the Commission deletes the sentence, “A disclosure is not Clear and Conspicuous if a consumer must take any action, such as clicking on a hyperlink or hovering over an icon, to see it.” This prohibition would have made effective space-constrained disclosures of the terms required by the final Rule difficult if not impossible. However, a clear and conspicuous disclosure still must be “unavoidable.” By this requirement, consumers are protected from buried or inconspicuous disclosures. Sellers, on the other hand, can make disclosures “unavoidable” even if the consumer must take some action to see it. Specifically, the seller could make it impossible for the consumer to consent to a transaction or feature unless and until the consumer has seen the disclosure. For example, a seller dealing with space constraints on a mobile device might not display a consent button until after the consumer has scrolled down to a clear disclosure and then clicked a button indicating they have seen the disclosure.

Section 425.4(b)(2) (“Placement”) retains the proposed Rule’s structure requiring a subset of disclosures to “appear immediately adjacent to the means of recording the consumer’s consent for the negative option feature,” while setting a more general timing requirement regarding other disclosures. However, the Commission has revised some terms to promote clarity.

Specifically, final § 425.4(b)(2)(i) requires only the four specific mandatory disclosures listed in § 425.4(a) to appear “immediately adjacent to the means of recording the consumer’s consent.” The Commission is persuaded by commenters’ concerns that requiring market participants to determine which required disclosures are “directly related to the negative option feature,” and which are not, is too great a burden and could lead to consumer confusion.³⁰⁷ Thus, rather than define “directly related to the negative option feature,” the Commission removes this phrasing and confines the “immediately adjacent” requirement to a specific, narrow list of disclosures. This change provides clarity and improves predictability for

consumers, and should prevent disclosure overload.

Several commenters requested clarification of the “immediately adjacent” requirement in the context of voice transactions.³⁰⁸ In response, the Commission clarifies to comply with this requirement, a voice transaction seller must make the required disclosures immediately before requesting and recording the consumer’s consent to the negative option feature.

Two commenters expressed concern that requiring sellers to make disclosures “before consumers make a decision to buy” creates uncertainty because it is unclear when that triggering event occurs.³⁰⁹ The Commission agrees. Therefore, it revises § 425.4(b)(2)(ii) to provide generally for all required disclosures to appear before the seller obtains consumer consent to the transaction pursuant to § 425.5. This amended language provides a triggering event based on a clear point in the process. Additionally, the Commission revises § 425.4(b)(2)(ii) to remove the phrase “not directly related to the negative option feature,” doing so for the same clarity reasons described above for removing the phrase “directly related to the negative option feature” from § 425.4(b)(2)(i).

Finally, the Commission adopts a clarified version of § 425.4(b)(3) (“Other information”). The Commission retains the proposed Rule’s requirement that sellers not employ “other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the disclosures.” However, the Commission finds the final clause in the proposed Rule (“including any information not directly related to the material terms and conditions of any negative option feature”) could be read to contradict other requirements of the Rule. Specifically, there may be necessary material disclosures not directly related to the terms and conditions of a negative option feature, and it is illogical to simultaneously require these disclosures (through §§ 425.4(a) and (b)(2)) and prohibit them (through § 425.4(b)(3)). The Commission therefore omits the clause from the final Rule. This revision does not alter the requirement of § 425.4(b)(2)(i) that certain specific disclosures be made clearly and conspicuously immediately adjacent to the means of recording the consumer’s consent. A seller who makes

additional disclosures immediately adjacent to the means of recording the consumer’s consent in a manner undermining the clarity and conspicuousness of the required § 425.4(b)(2)(i) disclosures violates § 425.4(b)(2)(i) and § 425.4(b)(3).

5. Proposed § 425.5 Consent

Section 425.5(a) of the proposed Rule prohibited sellers from charging consumers before obtaining their express informed consent to the negative option feature. This provision mirrors 15 U.S.C. 8403(2) (ROSCA), but provided specificity for sellers covered by the Rule and to prevent unfair and deceptive practices. Specifically, the provision addressed one of the most pervasive problems of negative option marketing: sellers employing inadequate consent procedures to increase enrollment. Even for marketers trying to comply with the law, negative option programs present unique challenges. Specifically, consumers often focus on the aspects of an offer that mirror the offers they regularly encounter (e.g., the quality, functionality, and one-time price of the item) and think they are consenting to these core attributes while missing the negative option feature.

To address this problem, § 425.5(a)(1) of the proposed Rule required sellers to obtain a consumer’s unambiguously affirmative consent to the feature separately from any other portion of the transaction. Section 425.5(a)(2) of the proposed Rule further required the seller to exclude any information that “interferes with, detracts from, contradicts, or otherwise undermines” the consumer’s ability to provide express informed consent to the negative option feature. This prohibition is consistent with longstanding Commission precedent that consent can be subverted, including by so-called “dark patterns,” sophisticated design practices used to manipulate users into making choices they would not otherwise have made.³¹⁰

Additionally, under § 425.5(a)(3) of the proposed Rule, sellers had to obtain consumers’ unambiguously affirmative consent to the rest of the transaction to ensure consumers agreed to all elements of the agreement, even those not specifically related to the negative option feature. Further, § 425.5(a)(4) of the proposed Rule required sellers to obtain and maintain (for three years or a year after cancellation, whichever is

³⁰⁶ The Commission declines to adopt NFIB’s suggested change to strike the provision “The disclosure must use diction and syntax understandable to ordinary consumers” and replace it with “The disclosure must use words and grammar that ordinary consumers would likely understand.” Particularly in the context of audio disclosures, the terms “diction and syntax” provide clearer requirements than the terms “words and grammar.” NFIB, FTC–2023–0033–0789.

³⁰⁷ NRF, FTC–2023–0033–1005; Law Professors, FTC–2023–0033–0861.

³⁰⁸ Coalition, FTC–2023–0033–0884; Chamber, FTC–2023–0033–0885.

³⁰⁹ Kuehn, FTC–2023–0033–0871; NRF, FTC–2023–0033–1005.

³¹⁰ See, e.g., *FTC v. RevMountain, LLC*, No. 2:17–cv–02000 (D. Nev. 2017); *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196 (9th Cir. 2006); *United States v. Mantra Films, Inc.*, No. 2:03–cv–9184 (C.D. Cal. 2003); *FTC v. Crescent Publ’g Grp., Inc.*, 129 F. Supp. 2d 311 (S.D.N.Y. 2001).

longer) verification of the consumer's consent. The Commission specifically sought comment on the appropriate recordkeeping period.³¹¹

To maintain consistency with the TSR, § 425.5(b) contained a cross-reference to 16 CFR part 310 so sellers subject to the TSR know they must comply with all applicable provisions of that Rule, including those related to pre-acquired account information and free-to-pay conversions.

Proposed § 425.5(c) provided an exemplar consent mechanism for those making written offers (including those on the internet) to illustrate how sellers could obtain consumers' unambiguously affirmative consent to the negative option feature. Specifically, this provision stated for all written offers, sellers may obtain such consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the negative option feature. This consent had to be independent from any other portion of the offer.³¹²

Finally, the Commission invited comments on whether sellers offering free trials should be required to obtain an additional round of consent before charging a consumer at the end of a free trial.³¹³

(a) Summary of Comments

Consistent with the Commission's and States' enforcement experience,³¹⁴ individual consumers' comments confirm the need for clear, unambiguous, affirmative consent to a negative option feature. These comments identify numerous examples of consumers' unwitting enrollment in negative option programs.³¹⁵

³¹¹ NPRM, FR 88 24727 n.70; *see also id.* at 24734.

³¹² To avoid potential conflict with EFTA, this proposed provision does not apply to transactions covered by the preauthorized transfer provision of that Act, 15 U.S.C. 1693e, and Regulation E, 12 CFR 1005.10. Those EFTA provisions, which apply to a range of preauthorized transfers include some used for negative options, contain various prescriptive requirements (e.g., written consumer signatures that comply with E-Sign, 15 U.S.C. 7001–7006, evidence of consumer identity and assent, the inclusion of terms in the consumer authorization, and the provision of a copy of the authorization to the consumer) beyond the measures identified in the proposed Rule. Consequently, compliance with the proposed Rule would not necessarily ensure compliance with Regulation E. For example, use of a check box for consent without additional measures may not comply with Regulation E's more specific authorization requirements.

³¹³ NPRM, 88 FR 24728.

³¹⁴ *See, e.g.*, State Attorneys General (ANPR), FTC–2019–0082–0012; State AGs, FTC–2023–0033–0886 (citing cases); *FTC v. Amazon.com, Inc.*, No. 2:23–cv–0932 (W.D. Wash. 2023); *see also* n.109.

³¹⁵ *See, e.g.*, Anonymous commenter, FTC–2023–0033–0799 (automatically enrolled in program

Sellers and trade groups also supported the requirement,³¹⁶ as did consumer groups.³¹⁷ However, sellers and trade groups expressed concern about the requirement that sellers obtain separate, unambiguously affirmative consent to the “rest of the transaction,” as opposed to the “negative option feature” itself. Specifically, these commenters asserted consumers may be confused where the product or service itself is only offered as a negative option, such as with streaming services or periodicals.³¹⁸ As explained by one

without consent); Individual commenter, FTC–2023–0033–0039 (free-trial conversion to one year plan without consent); Individual commenter–FTC–2023–0033–0052 (discount to full-price conversion without consent); Individual commenter, FTC–2023–0033–1119 (cancelled, then automatically re-enrolled without consent); Individual commenter, FTC–2023–0033–0079 (automatically re-enrolled without consent); Individual commenter, FTC–2023–0033–0083 (no disclosure account would be automatically renewed); FTC–2023–0033–0138 (charged after cancellation); Individual commenter, FTC–2023–0033–0275 (no affirmative consent to monthly charge).

³¹⁶ Sirius XM, FTC–2023–0033–0857 (businesses should be required to obtain express informed consent to the negative option feature at the point of sale); PDMI, FTC–2023–0033–0864 (no objection to the general requirement that sellers obtain a consumer's consent to a transaction containing a negative option feature); MIA, FTC–2023–0033–1008 (agreeing with the consent requirement under the proposed Rule).

³¹⁷ Berkely Consumer Law Center, FTC–2023–0033–0855; State AGs, FTC–2023–0033–0886 (noting State Attorneys General support the FTC's proposed consent requirements and agree this provision is necessary given how easily marketers can enroll consumers in negative option programs without actual consent.). One individual consumer generally supported the separate consent requirements of the proposed Rule, but asked that the regulation prevent businesses from only offering goods and services through auto-renewal and subscription programs, *i.e.*, consumers should have the option to purchase a good or service a la carte and not only on a recurring basis. Individual commenter, FTC–2023–0033–0026.

³¹⁸ Sirius XM, FTC–2023–0033–0857 (requiring an additional consent will only result in consumer confusion); NCTA, FTC–2023–0033–0858 (“requiring two consents could lead to consumer confusion (to say nothing of their exasperation at being forced to read and provide consent to a plethora of successive and largely duplicative documents). They may wonder why they are being asked to consent twice to a single transaction. And might worry that they have somehow misunderstood one or both of the consent notices”); PDMI, FTC–2023–0033–0864 (anecdotal evidence received from several PDMI members demonstrates that any time an additional choice or check box is offered to a consumer during a single transaction, such extra steps are likely to cause consumer confusion); N/MA, FTC–2023–0033–0873 (“Requiring sellers to separate a single unified offer into separate components is not only unnecessary, it risks creating consumer confusion and fatigue” and consumers may “simply abandon the transaction”); RILA, FTC–2023–0033–0883 (“requirement for two distinct consents . . . may be confusing and not helpful to consumers.”); DCN, FTC–2023–0033–0983 (“We are concerned that requiring a separate consent would be confusing for the consumer who may not have the details of the entire contract readily available in the mandated

commenter, in these situations a second consent is likely unanticipated, and thus, could be confusing.”³¹⁹

Other groups asserted if consumers are confused, they may not affirmatively consent to the rest of the transaction, which could cause uncertainty about the existence of the contract.³²⁰ Commenters also noted too many required actions during the purchasing process may lead to “fatigue” and “cognitive overload,” causing consumers to abandon transactions they may have otherwise wanted.³²¹ Finally, several commenters complained the separate consent requirements would be difficult (and costly) to implement, but without any benefit to consumers.³²²

separate context. For example, most consumers would likely want to review all of the benefits they would receive as part of a subscription including any discounts when deciding on whether to choose the option of automatic renewal.”); APCA, FTC–2023–0033–0996 (“Requiring a separate consent for a feature that is inherent in service contracts—continuous coverage—seems unnecessary and detrimental to consumers.”).

³¹⁹ IAB, FTC–2023–0033–1000 (“Furthermore, consumers are familiar with subscription sign-up experiences and do not expect to have to consent a second time once they choose to purchase an autorenewal plan.”). One individual consumer confirmed the comment. Individual commenter, FTC–2023–0033–0552 (“The rule specifically prescribes that users must affirmatively assent specifically to the negative option feature, but in cases where a user is only purchasing a negative option product, how should other disclosures be presented?”)

³²⁰ NCTA, FTC–2023–0033–0858; Sonsini Alarm Clients, FTC–2023–0033–0860 (“could lead to consumers inadvertently failing to consent to auto-renewal (because they did not notice the second check box) and having an unintended lapse in home security system coverage.”); Asurion, FTC–2023–0033–0878 (“many consumers who want and could benefit from auto-renewal protection provisions will neglect to make the requisite two separate affirmative consents and suffer real consequences when they find themselves with a broken device during a gap in coverage”); APCA, FTC–2023–0033–0996 (“A consumer who wants a service contract but then inadvertently fails to check a box indicating separate consent for the negative option feature could find that they no longer have coverage at the time they most need it.”).

³²¹ *See, e.g.*, DCN, FTC–2023–0033–0983 (could lead to over-notification); CCIA, FTC–2023–0033–0984 (“Adding too much additional information or too many required actions in a purchase cart has diminishing returns for consumer comprehension and attention, and can increase the cognitive load for consumers to the point that they simply stop reading or give up on the purchase.”); ANA, FTC–2023–0033–1001.

³²² NCTA, FTC–2023–0033–0858 (“would require companies to change their current customer sign-up flows, at significant cost, without providing consumers with any additional benefits”); PDMI, FTC–2023–0033–0864 (“requiring merchants to implement a double opt-in would impose an extraordinary financial and resource burden on sellers.”); *id.* (double opt-in requirements “makes absolutely no sense, where, as is often the case, there is no transaction separate from the negative option transaction”); SCIC, FTC–2023–0033–0879; Chamber, FTC–2023–0033–0885 (little to no evidence that double opt-in will create any

Thus, these commenters asked the Commission to exclude transactions where the negative option feature is not independent of the good or service being sold, *i.e.*, where the good or service is itself only offered as a negative option,³²³ or to delete the requirement that sellers obtain separate, unambiguous, affirmative consent “to the rest of the transaction.”³²⁴

Two commenters asked the Commission to modify the proposed provision by merging consent to the transaction and the negative option feature. These commenters suggested a separate consent should only be necessary where there are two independent portions of the transaction: one related to the negative option feature and a second for the sale of a separate good or service (including a free trial).³²⁵ Without this change, commenter Kuehn suggested “the proposed Rule could have the unintended result of diminishing the efficacy of other important terms of the contract.” Accordingly, Kuehn suggested the Commission revise the definition of negative option feature to encompass the entire contract (rather than a provision of the contract).³²⁶ This alteration, along with changing “rest of the transaction” to “the sale of another good or service,” would make it clear separate consent is only required where the seller has both an auto renewal agreement and the sale of another good or service.

IAB, DCN, CTA, and several direct marketing companies asserted the Commission could achieve the same outcome—informed consent—through less restrictive means, *e.g.*, by requiring a clearer disclosure of the negative option feature.³²⁷ For example, CTA

consumer benefit, instead will increase consumer fatigue); *see also* IAB, FTC–2023–0033–1000 (double opt-in could be especially burdensome for bundled services, requiring consumers to check an additional box for each service, without added benefit to clarity or disclosure); ICA, 2023–0033–1142 (“requiring recording keeping of “express informed consent” potentially expressed through verbal, digital, or written records for multiple years will be an onerous and expensive requirement for small business owners to fulfill.”).

³²³ Chamber, FTC–2023–0033–0885 (“unless there is a negative promotional option, service providers should not be required to have a separate consent for monthly billing and the underlying transaction when the underlying transaction is for a monthly service.”); *see also* MIA, FTC–2023–0033–1008 (“an additional consent to initiate a Subscription is unnecessary and superfluous”).

³²⁴ *See, e.g.*, Direct Marketing Companies, FTC–2023–0033–1016.

³²⁵ Kuehn, FTC–2023–0033–0871; RILA, FTC–2023–0033–0883.

³²⁶ Kuehn, FTC–2023–0033–0871.

³²⁷ Direct Marketing Companies, FTC–2023–0033–1016 (“the Commission provides no evidence or rationale that a robust, clear and conspicuous

posited: “[a]lternatively, to advance the same goal, and because the Proposed Rule already requires clear and conspicuous disclosure of material terms, the FTC could instead require subscription service providers to prominently disclose subscription terms in a manner that differentiates them from other disclosures, such as in bolded or underlined font, in the course of obtaining consumer consent to the transaction.”³²⁸ Additionally, several commenters questioned “why a seller should be precluded from including other material terms of the transaction in obtaining a single consent.”³²⁹

Some commenters raised additional concerns. For instance, several commenters challenged the Commission’s statement that a separate check box or similar method could be used to record a consumer’s unambiguously affirmative consent. Specifically, PDMI contended the check box, signature, or “substantially similar” method of consent could quickly become obsolete and “replaced by far more effective and consumer friendly mechanisms.”³³⁰ Another, NRF, argued courts routinely hold a separate check box is not required for consumers to manifest assent to terms and conditions of the agreement, so long as the terms are reasonably conspicuous.³³¹ Finally, a group of direct marketing companies, argued standalone consent is not necessary or reasonable, and other methods could suffice. They suggested the Commission include language that it “shall be a question of fact” whether the seller obtained consent through another means.³³²

Additionally, several trade groups and sellers expressed concern about the NPRM’s proposed recordkeeping requirements. For instance, one trade group explained the proposed requirements “would require sellers to

disclosure proximate to the consumer’s consent would be insufficient to prevent deception and remedy allegedly prevalent unfair or deceptive acts and practices”).

³²⁸ CTA, FTC–2023–0033–0997.

³²⁹ PDMI, FTC–2023–003–0864; Sirius XM, FTC–2023–0033–0857 (“Businesses should be able to obtain such consent in conjunction with the other terms of an offer,[] as long as they clearly and conspicuously disclose the negative option features and the other material terms of the offer and refrain from “includ[ing] any information that “interferes with, detracts from, contradicts, or otherwise undermines” the negative option terms.”).

³³⁰ PDMI, FTC–2023–003–0864.

³³¹ NRF, FTC–2023–0033–1005 (citing *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 79 (2d Cir. 2017)). It is unclear from NRF’s comment whether it questioned separate consent generally, or the guidance on a check box.

³³² Direct Marketing Companies, FTC–2023–0033–1016.

maintain records of consumer consent for at least three years, even for consumers who signed up for a free trial and cancelled it before being charged. As drafted, the proposed amendments would also require sellers to maintain records of consumer consent for eleven years for individuals who continuously subscribe to negative option features for at least ten years.”³³³

Numerous commenters asserted these recordkeeping requirements would increase costs, which could ultimately be passed onto consumers,³³⁴ or small businesses, especially with respect to in-person and telephone transactions.³³⁵ Others raised concern the proposed recordkeeping requirement could conflict with best privacy practices. For example, commenters noted the retention period is at odds with the need to minimize the amount of consumer data that businesses hold and to enable customers to request deletion of their data.³³⁶ Commenters also suggested the Commission reduce the length of the recordkeeping requirement, *e.g.*, to six months,³³⁷ or revise the proposal to eliminate the requirement for those who do not allow customers to purchase without

³³³ ANA, FTC–2023–0033–1001; *see also* BSA, FTC–2023–0033–1015 (“the current language could be read to require a company to retain for three years the records of a customer who signed up for a free trial but cancelled before the trial ended—and was therefore never a paying customer.”).

³³⁴ APCIA, FTC–2023–0033–0996; IAB, FTC–2023–0033–1000 (“this requirement will be significantly costly, as subscription businesses will need to overhaul their sign-up processes to comply with this requirement. Businesses seeking to offset this increased cost will be forced to pass this cost to consumers or avoid offering subscriptions at all”).

³³⁵ NCTA, FTC–2023–0033–0858 (“The proposal fails to account for the immense burden the proposal would impose on companies using alternative means to sell their products and services by requiring them to create and implement ways to capture and store duplicative layers of consumer consent.”).

³³⁶ CCIA, FTC–2023–0033–0984 (“This record retention rule also seems to be at odds with key principles of consumer privacy, namely the need to minimize the amount of consumer data that businesses hold and to enable customers to request deletion of any data in possession of a third party. A shorter mandatory retention period is more appropriate for both businesses and consumers.”); NCTA, FTC–2023–0033–0858 (“Not only is it expensive to maintain these records, it does not comport with privacy best practices.”).

³³⁷ ICA, 2023–0033–1142 (“Decrease the duration of the record-keeping requirement to six months after the business and the consumer enters into the agreement.”); *see also* Direct Marketing Companies, FTC–2023–0033–1016 (change recordkeeping requirement to keep or maintain records “for at least one year if the consumer is charged at least twice within six months after the initial charge; or for at least three years if the consumer is not charged at least twice within six months after the initial charge.”).

accepting the terms of the negative option feature.³³⁸

Two consumer groups supported the consent provision but asked the Commission to add clarifying language. Specifically, Berkeley Consumer Law Center asked the Commission to state the Rule strictly prohibits the use of dark patterns to obtain consent and that consent cannot be given through silence. A group of professors asked the Commission to clarify that disclosures “appear in each language in which the representation that requires the disclosure appears.”³³⁹

Finally, commenters split on whether the Rule should require separate affirmative consent for free-trial offers. Several consumers supported requiring separate consent at the conclusion of a free-trial period,³⁴⁰ with one consumer suggesting the Commission ban free-trial offers that require the prepurchase of the good or service.³⁴¹ Other consumer interest and public advocacy groups reiterated consumers often forget, or are unaware they have signed up for, a negative option feature in connection with a free trial offer.³⁴² Sellers and

trade groups disagreed, specifically noting the Commission’s own analysis indicating a separate consent may not be necessary given the other requirements of the Rule³⁴³ and existing State laws.³⁴⁴

(b) Analysis

Based on the record, the Commission removes the proposed requirement that sellers obtain separate consent to “the rest of the transaction” under § 425.5(a)(3). Further, the Commission modifies the recordkeeping requirement to require sellers to maintain records only for three years from the date of consent. Alternatively, if sellers can show by a preponderance of the evidence they use processes that make it technologically impossible for a consumer to purchase the good or service without consent, sellers need not retain such records.³⁴⁵ Finally, the Commission declines to modify the consent provisions to require separate consent for free-trial offers. However, should the Commission seek additional comments about a provision to require annual reminders,³⁴⁶ it will consider addressing such offers at that time.

Prior to addressing each of the issues listed above, it is important to clarify one point. A negative option feature is not itself a product or service—it is simply a mechanism for repeatedly consenting to the extension of a contract through silence. Thus, there are not situations in which the negative option feature is the product, as some commenters suggested. In the example provided above, a subscription to a streaming entertainment service can be offered with (e.g., the offer renews each month until cancellation) or without (e.g., the subscription lasts one year and then must be affirmatively renewed, or it cancels) a negative option feature. There are situations in which sellers only offer products or services on a

negative option basis; however, doing so does not lessen the need to ensure consumers consent to the negative option mechanism within the agreement. Therefore, the analysis below does not separately address this issue.

(1) *The Commission does not adopt a requirement for separate consent to “the rest of the transaction” because it is unnecessary, confusing, and hard to implement.*

Based on the comments, the Commission finds requiring consumer consent to “the rest of the transaction” apart from the negative option feature is unnecessary, potentially confusing, and may be hard to implement. First, even without the separate consent requirement, the proposed Rule contained several elements that work together to ensure consumers know they are agreeing to a negative option feature. Specifically, the proposed Rule required sellers to obtain the consumer’s unambiguously affirmative consent to the negative option feature separately from any other portion of the transaction³⁴⁷ through, for example, a separately presented check box.³⁴⁸ It also required sellers to clearly and conspicuously provide important information immediately adjacent to the request for consumer consent, including that the charge will be recurring, the deadline to act to stop charges, the amount of the charges, and information necessary to cancel.³⁴⁹ Further, the proposed Rule stated the seller cannot include any information or employ any techniques that interfere with the consumer’s ability to understand these important disclosures and provide unambiguously affirmative consent to the negative option feature.

Given these protections, a separate consent requirement is not necessary.³⁵⁰ Second, the Commission agrees the separate consent requirement could cause consumer confusion. Moreover, compliance with the Rule’s required disclosure and consent provisions should address the concerns commenters raised regarding deception. Finally, several sellers suggested, and there is no evidence to the contrary, that seeking consent to both the negative

³³⁸ PDMI, FTC–2023–003–0864; Chamber, FTC–2023–0033–0885.

³³⁹ Law Professors, FTC–2023–0033–0861.

³⁴⁰ Individual commenter, FTC–2023–0033–0843 (“In addition to making it easy to cancel an online subscription, it should be illegal for companies offering a ‘free trial’ to bill for any term of subscription without an opt-in step. If they really believe trying their product will prompt me to keep using it, then it needs to be a 2-step process in which at the end of the trial period they must ask for and receive an opt in before they place a charge on my card.”); Individual commenter, FTC–2023–0033–0615 (“Rather than automatic renewals, I think subscriptions should only be renewed following consumer approval. For example, after a 14-day trial of an app, consumers should be asked if they approve a purchase to continue. If approval isn’t given, the default should be that the subscription expired and the consumer isn’t charged.”); Individual commenter, FTC–2023–0033–0993 (“If it’s a trial subscription the company should notify you that your trial is over and affirm your desire to continue.”).

³⁴¹ Individual commenter, FTC–2023–0033–0026; see also Individual commenter, FTC–2023–0033–0583 (“Require that any entity not require a credit card on file for a trial, or any free period.”); Individual commenter, FTC–2023–0033–0641 (“Consumers shouldn’t have to be required to submit credit/debit card information for a trial usage. And, consumers shouldn’t be automatically charged the day after the trial expires.”); Individual commenter, FTC–2023–0033–1069 (“A free trial should not create an automatic subscription!”); Individual commenter, FTC–2023–0033–0607 (“A ‘trial offer’ should be just that—a ONE-TIME purchase.”).

³⁴² State AGs, FTC–2023–0033–0886 (“the State Attorneys General again respectfully encourage the FTC to require sellers offering free trials to obtain an additional round of consent before charging a consumer at the completion of the free trial.”); Law Professors, FTC–2023–0033–0861 (“we ask that the Commission require additional consent from the consumer before a business may convert a free (or nominal-fee) trial into an expensive subscription. Indeed, it seems that Congress, in adopting ROSCA,

validated consumer expectations that they would “have an opportunity to accept or reject [a] membership club offer at the end of [a] trial period.”); TINA, FTC–2023–0033–1139 (“Such consumer complaints are consistent with survey data showing that 42 percent of consumers forget they are still paying for a subscription they no longer use.[] ‘Many of those happen after you get enticed by a free trial for an online streaming service or a monthly subscription service for clothes or personal items, and then you forget to cancel it after that trial is over.’”).

³⁴³ Sirius XM, FTC–2023–0033–0857 (“As long as consumers are clearly informed about the terms of a free trial offer and evince affirmative consent, no further consumer consent should be required when the free trial period expires.”).

³⁴⁴ CCLA, FTC–2023–0033–0984; Chamber, FTC–2023–0033–0885.

³⁴⁵ This change will not affect a seller’s obligation to maintain appropriate records under other regulations, e.g., the TSR.

³⁴⁶ See section VII.B.7.

³⁴⁷ Section 425.5(a)(1).

³⁴⁸ Section 425.5(c) allows sellers to comply with the requirement to obtain unambiguously affirmative consent to the negative option feature through a check box, signature, or other substantially similar method.

³⁴⁹ See Rule § 425.4(a)(1)–(4).

³⁵⁰ The Commission further notes because the seller is obtaining express informed consent to the negative option feature separately from the rest of the transaction, consumers are, in effect, agreeing to both the negative option feature and the sale of the good or service separately.

option feature and the rest of the transaction could be hard to implement for many sellers. Thus, the final Rule does not contain the separate consent requirement.³⁵¹

(2) *The Commission modifies the recordkeeping requirements to address legitimate privacy concerns and reduce undue burden on small businesses.*

Section 425.5(a)(4) of the proposed Rule required sellers to obtain and maintain (for three years or a year after cancellation, whichever was longer) verification of the consumer's consent to the negative option feature.

Implementation of this requirement would undoubtedly enhance the FTC's ability to enforce the Rule. However, the Commission agrees the proposal creates privacy concerns. The Commission has long recommended companies employ data retention policies that "dispose of data once it has outlived the legitimate purpose for which it was collected."³⁵² Therefore, the Rule's data retention requirement, could, in some instances, be at odds with this guidance. Further, several commenters asserted a longer recordkeeping requirement will be burdensome, particularly for small businesses.

Balancing the Commission's interest in robust Rule enforcement against privacy and burden concerns, the Commission modifies the proposed Rule. Specifically, § 425.5(a)(3) of the final Rule requires sellers to keep or maintain verification of the consumer's consent for a period of three years from the date of consent (rather than three years or a year after cancellation, whichever is longer). Removing the requirement that sellers keep records until one year after cancellation prevents the retention of records for very long periods of time while the contract is still in force. Moreover, as some commenters stated,³⁵³ sellers can employ technological processes for online consent that could alter the balance of concerns. Specifically, it is technologically feasible to make it impossible for customers to enroll without providing unambiguously affirmative consent. The Commission therefore further modifies the recordkeeping requirement to eliminate the requirement entirely if a seller can

demonstrate it meets this threshold. The final provision will allow sellers to destroy consumer records more quickly, while accomplishing the same goal.³⁵⁴ Finally, the Commission clarifies maintaining copies of advertisements or telephone scripts documenting the disclosures provided in general does not meet this requirement. Such information is easily manipulated by deceptive sellers and cannot show any particular consumer received the disclosures prior to giving consent. Therefore, sellers must either maintain records of each consumer's unambiguously affirmative consent or demonstrate they satisfy the technological exemption provision.

(3) *Other concerns raised by commenters do not warrant modifications to the rule.*

As noted above, a few commenters questioned the Commission's proposed exemplar consent mechanism under § 425.5(c). This proposed provision states for written offers, a check box, signature, or "substantially similar" method can be used to obtain a consumer's unambiguously affirmative consent. The Commission notes the mechanism applies to the negative option feature only, and thus corrects the cross-reference contained in this provision from (a)(3) to (a)(1).

The Commission further notes this provision does not require a check box or signature. The Commission offered these methods only as examples a seller can use to obtain unambiguously affirmative consent, not the only ways to do so. Thus, the exemplar does not conflict with caselaw holding that a check box is not required to manifest consent. The Commission also declines to include language in the final Rule, as one commenter suggested,³⁵⁵ stating whether a seller has complied with this provision is a question of fact. This is unnecessary because the Commission always evaluates sellers' practices on a case-by-case basis to determine whether they comply with the law.

The Commission further declines to remove this provision's reference to "substantially similar" methods as some commenters requested. The language is intended to cover any method that affords consumers all the same protections as a check box or signature. The phrase "substantially similar" performs this function while allowing for technological advancement, innovation, and adaption without tying

sellers to specific mechanism that may become obsolete.

Further, the Commission declines to modify the final Rule to allow sellers to obtain express informed consent by merely "disclosing" the negative option more clearly through, e.g., bolded or underlined font, rather than obtaining expressed informed consent separately for the negative option feature. Although this change would be "less restrictive," it would not adequately protect consumers from unknowingly enrolling in negative option programs. In the NPRM, the Commission balanced the need for clear, unavoidable disclosure of, *inter alia*, the negative option feature with the need for flexibility to allow sellers to best communicate their entire message to consumers. The proposed Rule strikes the right balance. As discussed above, proposed § 425.4 (Important Information), required sellers to clearly and conspicuously disclose important information about the negative option feature, immediately adjacent to the means of recording consent to the feature, and, under § 425.5 (Consent), separately from any other portion of the transaction. The Commission did not specify exact placement, language, or font size because doing so would have diminished flexibility without a sufficient corresponding benefit.

While this balance is appropriate, the required disclosure of important information under § 425.4 does not replace the requirement that sellers obtain consumers' express informed consent. To avoid harm from unfair and deceptive practices, it is imperative consumers unequivocally understand they are agreeing to enrollment in a negative option program and demonstrate their agreement.

The Commission also declines to add language stating (1) the Rule strictly prohibits the use of dark patterns to obtain consent and (2) consent cannot be given through silence. The Rule already addresses both concerns. First, the Rule bars any information that "interferes with, detracts from, contradicts, or otherwise undermines" the consumer's ability to provide express informed consent. To the extent dark patterns run afoul of any of these requirements, they are prohibited. To the extent they do not, consumers' express informed consent as required by the Rule is not implicated. Second, under § 425.5, consumers already must give affirmative consent.

Finally, the Commission does not need to clarify, as some commenters suggested, that required consents "appear in each language in which the

³⁵¹ See § 425.5(a)(3).

³⁵² NCTA, FTC-2023-0033-0858 (citing FTC, "Protecting Consumer Privacy in an Era of Rapid Change" (2012) at 28, www.ftc.gov/reports/protecting-consumer-privacy-era-rapid-change-recommendations-businesses/policymakers).

³⁵³ ANA, FTC-2023-0033-1001; ESA, FTC-2023-0033-0867 (for purchases that cannot be completed without a consumer's consent, a business will be deemed compliant with any recordkeeping requirement and is not required to maintain an individual record of consent).

³⁵⁴ Importantly, if the seller does not maintain records and cannot satisfy the technological exemption, the seller has violated the Rule.

³⁵⁵ Direct Marketing Companies, FTC-2023-0033-1016.

representation . . . appears.”³⁵⁶ To obtain a consumer’s express informed consent, each disclosure must be clear and conspicuous and immediately adject to the means of recording the consumer’s consent. To meet the clear and conspicuous standard as defined in the Rule, the disclosure must, among other things, “appear in each language in which the representation that requires the disclosure appears.”³⁵⁷

(4) *The Commission does not modify the Rule to require separate consent for free trial offers.*

In the NPRM, the Commission invited comments on whether the Rule should require an additional (or alternative) round of consent after the end of a free trial offer. As explained in the NPRM, if the seller follows the proposed Rule’s disclosure and consent requirements, consumers should understand they are enrolled in, and will be charged for, the negative option feature once the free trial ends. As discussed above, however, several commenters explained with enough time between initial enrollment and charge after conversion, consumers are primed to forget the negative option feature.³⁵⁸ The Commission agrees this an important issue; however, clear upfront disclosures lessen the chance a negative option feature may be unfair or deceptive. Specifically, clear, accurate upfront disclosures reduce the risk of deception, and the potential harms caused are more likely to be reasonably avoidable (*i.e.*, the consumer can simply refuse to enter into the contract). That said, taking advantage of consumers’ “forgetfulness” is extremely troubling and thus ripe to be addressed by other means.

6. Proposed § 425.6 Simple Cancellation (“Click to Cancel”)

Section 425.6 of the proposed Rule contains several requirements to ensure consumers can easily cancel negative option features. As explained in the NPRM, “easy cancellation is an essential feature of a fair and non-deceptive negative option program,” but one that has become “far too often illusory.”³⁵⁹ “If consumers cannot easily leave a negative option program, the negative option feature is little more

than a means of charging consumers for goods and services they no longer want.”³⁶⁰

To prevent unfairly trapping consumers in a transaction they do not want, the proposed Rule directed sellers to provide a cancellation mechanism that (1) immediately halts recurring charges; (2) is as simple to use as the mechanism the consumer used to consent to the negative option feature; and (3) is readily accessible through the same medium the consumer used to provide that consent. The Commission intended these requirements to erect clear guardrails, while providing sellers with the flexibility to innovate. Therefore, rather than propose specific prohibitions, which may lose utility over time, or inadvertently provide a roadmap for deception, the proposed Rule outlined a performance-based standard mapping the contours of what constitutes a simple mechanism, without overly prescriptive requirements.

(a) § 425.6(a) and (b) Simple Mechanism Required for Cancellation; and Simple Mechanism at Least as Simple as Initiation

(1) Summary of Comments

Proposed § 425.5(a) and (b) required a fast and easy cancellation mechanism that, at minimum, allows the consumer to cancel as easily as they enrolled in the program. The Commission received thousands of comments in support of this provision, with individual consumers uniformly expressing their desire for a simple easy to use cancellation mechanism.³⁶¹ Such comments included: “If you signed up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel.”³⁶² “I

would like the option to cancel my subscriptions, [and] offers online just as easily as it was to sign up;”³⁶³ “As more and more services enter online use, it is ridiculous that consumers have to jump through so many hoops to cancel services when it is so easy to sign up for them;”³⁶⁴ and “Consumers need the one-click option.”³⁶⁵

Some commenters suggested unsubscribing should be easier than enrolling,³⁶⁶ and others, “very easy.”³⁶⁷ Indeed, several advocated for an “Unsubscribe link,”³⁶⁸ similar to those available under the CAN–SPAM Act.³⁶⁹ Numerous commenters complained they

FTC–2023–0033–0017 (“It should be as easy as one click to cancel an online account.”); Individual commenter, FTC–2023–0033–0068 (“Being able to go online and with a simple click be able to cancel a subscription would be a dream.”); *see also* Individual commenter, FTC–2023–0033–0015 (“Ending a subscription should be as easy as it was to sign up. it makes no sense how hard it is to close out an account with some places.”); Individual commenter, FTC–2023–0033–0020 (“The time has come to make it as easy for consumers to cancel subscriptions as it has been to start them.”); Individual commenter, FTC–2023–0033–0087 (“I think any offer you can buy with a click should also be an offer to unsubscribe with a click.”).

³⁶³ Individual commenter, FTC–2023–0033–0003; *see also* Individual commenter, FTC–2023–0033–0010 (“I for one would be for the Easing of subscription cancellation. Having it be much harder to cancel a subscription than start it simply shouldn’t be.”); Anonymous commenter, FTC–2023–0033–0024 (“It should be no harder for consumers to stop giving a company their money than it is for them to start giving it to them.”); Individual commenter, FTC–2023–0033–0025 (“In fact, it should be as easy to cancel as it is to sign up.”).

³⁶⁴ Individual commenter, FTC–2023–0033–0231; Individual commenter, FTC–2023–0033–0109.

³⁶⁵ Individual commenter, FTC–2023–0033–0403.

³⁶⁶ “Unsubscribing should be easier than subscribing.” Individual commenter, FTC–2023–0033–0005. *Accord* Individual commenter, FTC–2023–0033–0021 (same); Anonymous commenter, FTC–2023–0033–0040 (“I am in favor of making it easier to discontinue services.”); Individual commenter, FTC–2023–0033–0107 (“Canceling a subscription should be easier that setting up the subscription.”).

³⁶⁷ Individual commenter, FTC–2023–0011 (“It should be very easy to cancel a subscription, artificially creating difficulty or hurdles only serves to hurt the consumer of a service as well as a company’s image and deplete trust in a brand or service.”); Individual commenter, FTC–2023–0033–0036 (“It should be very easy to cancel a subscription!!!!”).

³⁶⁸ Individual commenter, FTC–2023–0033–0030; Individual commenter, FTC–2023–0033–0035; *see also* Individual commenter, FTC–2023–0033–0188 (“If you sign up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel. Kind of like ‘unsubscribing’ from an email newsletter you don’t want to get anymore.”); Individual commenter, FTC–2023–0033–0236 (“When I get an email from a politician I’m not interested in there is always an unsubscribe button. Why can’t paid subscriptions be the same?”).

³⁶⁹ Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN–SPAM Act”), 15 U.S.C. 7701–7713; 16 CFR part 316.

³⁵⁶ Law Professors, FTC–2023–0033–0861.

³⁵⁷ Rule § 425.2(c)(6).

³⁵⁸ Deceptive sellers also commonly delay shipment of goods or services until close to the end of the trial period, giving consumers little time to stop the charge or cancel the negative option. *See, e.g.*, Individual commenter, FTC–2023–0033–0085.

³⁵⁹ NPRM, 88 FR 24729; *see* ANPR, 84 FR 52395 (discussing general requirements for nondeceptive negative options); *id.* at 52396 (discussing the ongoing problems in the marketplace including inadequate or overly burdensome cancellation procedures).

³⁶⁰ NPRM, 88 FR 24729.

³⁶¹ Individual commenter FTC–2023–0033–0029 (“Please implement this necessary rule to protect consumers and save us hours on the phone cancelling services we signed up for with one click online.”); Individual commenter, FTC–2023–0033–0072 (“I have had issues with some online subscriptions which were entered into purely online, but to cancel I had to call a phone number open only during certain business hours. I would like a rule that requires all subscriptions to be available to cancel through the same means as they were initiated, whether that is online, in person, phone, mail, or chat. I believe that would be fair to people of all technological levels while allowing businesses to conduct business how they feel comfortable without allowing them to create unnecessary hurdles for customers looking to end their service.”).

³⁶² Individual commenter, FTC–2023–0033–0111. Thousands of individual consumers repeated this phrase through a mass media campaign. *See, e.g.*, Anonymous commenter, FTC–2023–0033–0013; Individual commenter, FTC–2023–0033–0016 (“If I can subscribe in one click, I should be able to unsubscribe in one click.”); Individual commenter,

often have to resort to disputing the charge with credit card companies (or cancelling the card altogether) because cancellation is so difficult or impossible.³⁷⁰ Additionally, commenters described the simple cancellation mechanism requirements as a “no brainer,” “common sense,” and “only fair” to consumers.³⁷¹ These and others commenters complained of the hundreds of dollars³⁷² and hours³⁷³

³⁷⁰ See, e.g., Individual commenter, FTC–2023–0033–0068; Individual commenter, FTC–2023–0033–0086; Individual commenter, FTC–2023–0033–0203 (“Recently, I had to start a dispute case with my credit card company because I had subscribed to a service and there was no way to cancel that service.”); Individual commenter, FTC–2023–0033–0211; Individual commenter, FTC–2023–0033–0225 (had new card issued); Individual commenter, FTC–2023–0033–0275 (disputed the charge and cancelled card); Individual commenter, FTC–2023–0033–0311 (cancelled credit card); Individual commenter, FTC–2023–0033–0320 (disputed charge); Individual commenter, FTC–2023–0033–0501 (terminated credit card); Individual commenter, FTC–2023–0033–1134 (cancelled credit card).

³⁷¹ See, e.g., Individual commenter, FTC–2023–0033–0256; Individual commenter, FTC–2023–0033–0408 (“common sense”); Individual commenter, FTC–2023–0033–0431 (“no brainer”); Individual commenter, FTC–2023–0033–0586 (“no brainer”).

³⁷² Individual commenter, FTC–2023–0033–0232; Individual commenter, FTC–2023–0033–0459 (“I once lost hundreds of dollars because I could not find how to cancel.”); Individual commenter, FTC–2023–0033–0509; Individual commenter, FTC–2023–0033–0232 (“I’m currently trapped in at least three subscriptions that are nearly impossible to cancel, costing me hundreds of dollars per year.”); Individual commenter, FTC–2023–0033–0509; Individual commenter, FTC–2023–0033–0825 (“I have wasted hundreds of dollars for things that automatically renewed as a result of not being able to figure out easily how to cancel.”); Individual commenter, FTC–2023–0033–0572; Individual commenter, FTC–2023–0033–0697 (“I have been caught up in just this very unfair practice where I’ve been lured in and can’t get out—to the tune of hundreds of dollars that I don’t have.”); see also Public Interest Groups, FTC–2023–0033–0880.

³⁷³ See, e.g., Individual commenter, FTC–2023–0033–029 (“Please implement this necessary rule to protect consumers and save us hours on the phone cancelling services we signed up for with one click online.”); Anonymous commenter, FTC–2023–0033–0040 (“My negative experience was that it was a simple ‘click’ on-line to sign up for a service but to cancel same service it took three phone calls and hours of my time.”); Individual commenter, FTC–2023–0033–0084 (“I spent over two hours of my time trying to cancel the subscription.”); Individual commenter, FTC–2023–0033–0106 (“I’ve definitely lost at least 30 hours of my life dealing with insufferable ‘retention specialists,’ all of whom should be ashamed of what they do.”); Individual commenter, FTC–2023–0033–0431; Individual commenter, FTC–2023–0033–0385 (“This is not a bot generating a letter; it’s an actual person, and I want to register strong support for the one Click rule you are considering. I have wasted hours trying to deal with customer service, whose only goal is to keep me on board.”); Individual commenter, FTC–2023–0033–0672 (“It’s about time! Trying to unsubscribe can waste many hours, induce stress, result in unwanted subscription or cancellation fees, and leave personal data subject to abuse.”); Individual commenter, FTC–2023–0033–0642 (“There needs to be a substantial penalty when a

wasted on unused and unwanted products and services they were not effectively able to cancel due to byzantine cancellation procedures.³⁷⁴

As summarized by the Berkeley Consumer Law Center, “requiring the mechanism of cancellation be as simple as enrollment” will minimize “overly complex cancellation processes with multiple steps,” and prevent sellers “from trapping consumers in automatically renewing subscriptions through obstacles created by tedious processes or confusion.”³⁷⁵

Sellers and trade organizations argued the proposed requirements were “too vague.”³⁷⁶ For instance, PDMI asserted the requirement that the simple cancellation mechanism be as easy to use as the one used to initiate the transaction provides no clear guidance on when a transaction is “initiated.” Several industry and trade groups echoed this comment, contending “as easy as” is a difficult, and often subjective, standard.³⁷⁷ Other businesses complained the proposed Rule fails to define “simple mechanism”³⁷⁸ and making cancellation as easy as enrollment was not possible because they serve different purposes.³⁷⁹ IAB asserted the proposed requirements were overbroad in relation

service is requested to be cancelled, but the charges continue. I dropped my TV service from Comcast 3 months ago and they continue to charge me. Every time I need to re-contact them I waste an hour.”).

³⁷⁴ Individual commenter, FTC–2023–0033–0422 (“Implementing this consumer-protection rule has the potential to save American consumers millions of dollars, and prevent unscrupulous companies from using byzantine cancellation procedures to squeeze unwarranted funds out of their customers.”); Individual commenter, FTC–2023–0033–0233 (“I had to navigate an endless labyrinth of dark-patterned links in order to cancel an Amazon Prime subscription that took me one click to sign up for.”); Individual commenter, FTC–2023–0033–0482 (“They make it a labyrinth of obscure phrases and if you don’t know to click on just the right one, you’ll never be able to cancel.”).

³⁷⁵ Law Professors, FTC–2023–0033–0861; see also State AGs, FTC–2023–0033–0886 (“state attorneys general strongly endorse the FTC’s efforts to ensure that consumers enrolled in subscription services or other negative option plans are continuing to pay for those plans because they want to maintain their subscriptions, and not because it is too much trouble to cancel.”).

³⁷⁶ PDMI, FTC–2023–0033–0864; ACT App Association, FTC–2023–0033–0874 (elusive language); IAB, FTC–2023–0033–1000 (unclear how to measure simplicity).

³⁷⁷ Chamber, FTC–2023–0033–0885 (“ambiguous and hard to implement requirement”); NRF, FTC–2023–0033–1005 (as simple as not defined and no examples).

³⁷⁸ ACT App Association, FTC–2023–0033–0874. The Commission does indeed define “simple mechanism” through the requirements of § 425.6, as well as through existing caselaw and the 2021 Enforcement Policy Statement. See n.385.

³⁷⁹ ESA, FTC–2023–0033–0867; IHRS, FTC–2023–0033–0863; Chamber, FTC–2023–0033–0845; BSA, FTC–2023–0033–1015.

to the prevalent acts or practices the Commission identified.³⁸⁰

(2) Analysis

Considering the overwhelming support for a simple cancellation³⁸¹ mechanism that immediately halts charges,³⁸² and given substantial evidence supporting the need for such mechanism to prevent unfair and deceptive acts and practices, the Commission retains proposed § 425.6(a) and (b).³⁸³ The Commission disagrees with commenters’ argument that the “as easy as” standard is vague. The Commission has provided considerable guidance on what constitutes a simple or “easy” cancellation mechanism through numerous cases and its 2021 Enforcement Policy Statement.³⁸⁴

³⁸⁰ IAB, FTC–2023–0033–1000. The Commission addresses IAB’s prevalence assertions elsewhere. See section VII.A.

³⁸¹ Beyond the near universal support by consumers and consumer advocacy groups, some trade groups also supported the goal of ensuring consumers have a quick and easy mechanism to cancel. RILA, FTC–2023–0033–0883; see also Sirius XM, FTC–2023–0033–0857 (“All parties want an easy-to-use and an accessible method of cancellation”); ZoomInfo, FTC–2023–0033–0865 (“We concur with the FTC’s recognition that negative option terms, often concealed in ‘fine print’, can be difficult for consumers to negotiate or even to comprehend fully, and that canceling these contracts can be unfairly burdensome.”).

³⁸² Some commenters asked for clarification regarding whether the requirement under § 425.6(a) would also immediately cancel the entire contract. See, e.g., N/MA (“The FTC should also clarify that the ‘Click to Cancel’ proposal applies only to the negative option portion of a subscription and not to the entire subscription.”). The language of the Rule is clear—cancellation under the Rule applies only to the negative option portion of the contract, and not the entire contract. Section 425.6 (“it is violation of this Rule . . . for the negative option seller to fail to provide a simple mechanism for a consumer to cancel the negative option feature”). Thus, when a consumer cancels, all terms and conditions continue until the expiration of the contract or agreement.

³⁸³ BSA specifically requested the Commission revise subsection (a) to the following: “We suggest revising this language to clarify the intended result by stating the obligation is ‘to cancel the negative option feature and immediately stop any recurring charges for the good or service.’” BSA, FTC–2023–0033–1015. However, this change could create ambiguity regarding application of the subsection to the initiation of charges under free- and fee-to-paid conversions. Accordingly, the Commission will not incorporate the suggested change.

³⁸⁴ See, e.g., EPS, 86 FR 60822; *FTC v. FloatMe Corp.*, No. 5:24–cv–00001 (W.D. Tex. 2024); *United States v. Cerebral, Inc.*, No. 1:24–cv–21376 (S.D. Fla. 2024); *FTC v. Bridge It, Inc.*, No. 1:23–cv–09651 (S.D.N.Y. 2023); *FTC v. Vonage Holdings Corp.*, No. 3:22–cv–06435 (D.N.J. 2022); *FTC v. Benefytt Techs., Inc.*, No. 8:22–cv–01794 (M.D. Fla. 2022); *FTC v. First Am. Payment Sys.*, No. 4:22–cv–00654 (E.D. Tex. 2022); *United States v. MyLife.com, Inc.*, No. 2:20–cv–6692 (C.D. Cal. 2020); *FTC v. RagingBull.com, LLC*, No. 1:20–cv–03538 (D. Md. 2020); *FTC v. Age of Learning, Inc.*, No. 2:20–cv–07996 (C.D. Cal. 2020); *FTC v. Match Grp., Inc.*, No. 3:19–cv–02281 (N.D. Tex. 2019); *FTC v. Cardiff*, No. 5:18–cv–02104 (C.D. Cal. 2018); *FTC v. AdoreMe*,

Continued

Moreover, the “as easy as” standard is even clearer in context, *i.e.*, a flexible measure that ensures consumers have similar cancellation and consent experiences in terms of time, burden, expense, and ease of use, among other things.³⁸⁵ The Commission is aware these experiences may not always be perfectly symmetrical. Consumers may have to verify or authenticate their identity, for instance,³⁸⁶ or they may be asked to confirm their intent to cancel.³⁸⁷ However, reasonable verification, authentication, or confirmation procedures should not create distinctly asymmetrical experiences, particularly if the cancellation mechanism is located within account or user settings secured by authentication requirements for access. Any authentication, verification, or confirmation procedure that creates unreasonable asymmetry runs afoul of section 5 of the FTC Act and the Rule. Moreover, given the extensive record and the Commission’s experience with sellers using verification and authentication tools to thwart or delay cancellation,³⁸⁸ the Commission declines to create a safe harbor for these activities as some States have³⁸⁹ and as some commenters requested.³⁹⁰

Nevertheless, as some commenters point out, the proposed initiation or purchase date trigger may provide

Inc., No. 1:17-cv-09083 (S.D.N.Y. 2017); *FTC v. AAFE Prods. Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. JDI Dating, Ltd.*, No. 1:14-cv-08400 (N.D. Ill. 2014).

³⁸⁵ Some commenters raised the concern that sellers might create complicated signup procedures to justify complex cancellation mechanisms. ESA, FTC–2023–0033–0867; State AGs, FTC–2023–0033–0886; IAB, FTC–2023–0033–1000. As pointed out by the State AGs sellers must comply with all requirements of a simple cancellation mechanism, including that consumers can promptly effectuate cancellation through an accessible means.

³⁸⁶ Commenters insisted that reasonable authentication and verification procedures be allowed prior to cancellation to ensure that only authorized persons are making changes to an account. NFIB, FTC–2023–0033–0789; IHRSA, FTC–2023–0033–0863; ESA, FTC–2023–0033–0867; N/MA, FTC–2023–0033–0873; RILA, FTC–2023–0033–0883; ANA, FTC–2023–0033–1001.

³⁸⁷ See, *e.g.*, MIA, FTC–2023–0033–1008.

³⁸⁸ Berkeley Consumer Law Center, FTC–2023–0033–0855; RocketMoney, FTC–2023–0033–0998; Anonymous commenter, FTC–2023–0033–0024; Individual commenter, FTC–2023–0033–0411; Individual commenter, FTC–2023–0033–0850; Individual commenter, FTC–2023–0033–0861; Individual commenter, FTC–2023–0033–0888; Anonymous commenter; FTC–2023–0033–0134; Individual commenter, FTC–2023–0033–0326; Individual commenter, FTC–2023–0033–0778.

³⁸⁹ See, *e.g.*, Cal. Bus. & Prof. Code § 17602(d)(3); Colo. Rev. Stat. § 6–1–732(2)(d)(I)(B).

³⁹⁰ USTelecom, FTC–2023–0033–0876 (“expressly allow” business to engage in privacy and data security measures prior to cancellation); ANA, FTC–2023–0033–1001.

insufficient clarity.³⁹¹ Not all negative option features begin with a purchase (*e.g.*, free trials), and when a transaction is initiated is subject to interpretation or possible manipulation. Given this ambiguity, businesses attempting to comply with the proposed Rule may have difficulty, and those attempting to evade the proposed Rule may find loopholes with the proposed initiation or purchase date trigger. Thus, the Commission revises § 425.6(b)³⁹² to require the simple cancellation mechanism be “as easy as” the mechanism the consumer used “to consent” to the negative option feature, rather than “initiate” or “purchase” the feature. The moment of consent avoids the lack of clarity the terms “purchase” and “initiate” introduce and clarifies the action to which the cancellation must be compared.

(b) Proposed § 425.6(c) Minimum Requirements for Simple Mechanisms

(1) Summary of Comments

The proposed Rule required sellers to provide a simple cancellation mechanism through the same medium (internet, phone, in-person) the consumer used to consent to the negative option feature. Almost uniformly, consumers supported this requirement.³⁹³ However, a number of a trade groups disagreed, arguing, as explained below, the requirement is too prescriptive, or could lead to accidental or inadvertent cancellation.³⁹⁴ Instead, these commenters suggested the Commission allow consumers to choose their cancellation medium (*e.g.*, based

³⁹¹ For online cancellation, § 425.6(c)(1) of the proposed Rule required sellers to provide a simple cancellation mechanism through the same medium consumers used “to purchase the negative option feature.”

³⁹² The Commission also will make a conforming change to add “consent” in section 425.6(c)(1).

³⁹³ See, *e.g.*, Individual commenter, FTC–2023–0033–0072 (“I would like a rule that requires all subscriptions to be available to cancel through the same means as they were initiated, whether that is online, in person, phone, mail, or chat.”); Individual commenter, FTC–2023–0033–0252 (“the method provided for signing up for a service must also be provided for cancelling the same service, be just as easy to find, and require no more steps than it took to sign up.”).

³⁹⁴ See, *e.g.*, NCTA, FTC–2023–0033–0858; PDML, FTC–2023–0033–0864; CTA, FTC–2023–0033–0997; ANA, FTC–2023–0033–1001. See also Wilson Sonsini Goodrich & Rosati on behalf of certain of its alarm company clients (“Sonsini Alarm Clients”), FTC–2023–0033–0860 (alarm companies should be able to speak to the customers to verify identity and confirm cancellation intent); N/MA–FTC–2023–0033–0873 (A “one click” cancellation requirement for an entire subscription, especially absent some form of authentication, could also lead to accidental and/or malicious cancellations.); NRF, FTC–2023–0033–1005 (data suggests that one-click cancellation functions frequently cause accidental cancellations).

on “consumer expectations,” convenience, or common use by the seller).³⁹⁵

Consumer groups and law enforcement asked the Commission to add minimum requirements to the simple cancellation mechanism. For instance, the State AGs asked the Commission to include the various requirements stated in the 2021 Enforcement Policy Statement, *e.g.*, require negative option sellers “not [to] erect unreasonable barriers to cancellation or impede the effective operation of promised cancellation procedures, and must honor cancellation requests that comply with such procedures.”³⁹⁶ They also urged the Commission to adopt language from New York’s statute, which provides simple cancellation mechanisms must be “cost effective, timely, and easy to use.”³⁹⁷ Additionally, the Center for Data Innovation asked the Commission to create a working group to define simple mechanism further, including best practices for businesses.³⁹⁸

Finally, some commenters suggested the record lacks evidence that it would be unfair or harmful to consumers to have a cancellation process different from the sign-up process.³⁹⁹ Accordingly, they argued promulgating a trade regulation rule requiring such symmetry is beyond the Commission’s authority. Further, IAB argued the Commission cannot create new requirements defining simple cancellation methods beyond ROSCA’s simplicity standard, *i.e.*, that sellers provide simple mechanisms to stop recurring charges, because Congress already decided the appropriate standard.⁴⁰⁰

(a) Proposed § 425.6(c)(1): Online Cancellation

Section 425.6(c)(1) of the proposed Rule specifically addressed online cancellation, requiring sellers to provide a cancellation mechanism over the same website or web-based application the consumer used to consent. Thousands of commenters repeated the mantra: “If you signed up online, you should be able to cancel online,” noting they often face hurdles finding a cancellation mechanism, and then must call and

³⁹⁵ See, *e.g.*, Sirius XM, FTC–2023–0033–0857; N/MA, FTC–2023–0033–0873; State AGs, FTC–2023–0033–0886.

³⁹⁶ State AGs, FTC–2023–0033–0886.

³⁹⁷ *Id.*

³⁹⁸ CDI, FTC–2023–0033–0887.

³⁹⁹ CTA, FTC–2023–0033–0997; IAB, FTC–2023–0033–1000.

⁴⁰⁰ IAB, FTC–2023–0033–1000.

spend significant time on the telephone to cancel their subscriptions.⁴⁰¹

In contrast, RILA suggested consumers would not always expect to find a cancellation function through the same online medium the consumer used to enroll. “For example, contracts are . . . increasingly concluded online through third parties or via social media apps. Regardless of how a customer initially signs up, once she/he establishes a purchasing arrangement with a seller, the customer will logically look to the seller to cancel.”⁴⁰² Several commenters agreed, stating where a consumer enrolls through a third party, or through an IoT device, the consumer may naturally look to the seller with whom the consumer has the agreement.⁴⁰³

Similarly, trade groups, such as NCTA and PDMI, argued mandating consumer cancellation through the same website or web-based application the consumer used to initiate the transaction is too prescriptive.⁴⁰⁴ Several of these commenters asserted the proposed requirement is unnecessary and contrary to consumer expectations.⁴⁰⁵ They further contended when consumers enroll online, any online cancellation mechanism should be adequate.⁴⁰⁶ Further, these commenters suggested it may not be possible to offer the same website or web-based application due to contractual obligations and limitations imposed by third parties.⁴⁰⁷

Additionally, broadband, wireless, and streaming groups, such as NCTA and USTelecom, suggested the same-medium requirement is particularly troublesome for their industries because consumers often subscribe to multiple, or bundled, services, rendering cancellation online through a single click difficult or impossible. These

industries posited consumers often do not, in fact, want to cancel, but rather seek to downgrade or modify services. Therefore, requiring a consumer to speak to a live agent best accomplishes this goal, regardless of how the consumer enrolled.⁴⁰⁸

Alarm companies raised a similar concern, *i.e.*, there are no safeguards to ensure the consumer intended to cancel (rather than, *e.g.*, unsubscribe from marketing emails) when cancelling online. They also emphasized the importance of verifying a consumer’s identity prior to cancellation. As explained by a commenter representing various alarm company clients, alarm companies’ “cancellation procedures are designed to prevent inadvertent or malicious disabling of alarm monitoring services, often by directing consumers to call trained customer support representatives who can verify the consumer’s identity via their secure passcode and ensure any changes made to the account are intentional and fully informed.”⁴⁰⁹

(b) Proposed § 425.6(c)(2): Telephone Cancellation

Proposed § 425.6(c)(2) addressed situations in which sellers obtain consumer consent by telephone. In these situations, the proposed Rule required sellers to provide a telephone number to consumers and “assure” all calls are answered promptly during “normal business hours” and are no more costly than the call to enroll.

Several commenters asked the Commission to modify this section. Specifically, N/MA asked that sellers be allowed to confirm telephone cancellations through email verification.⁴¹⁰ A group of law professors asked the Commission to require sellers to answer cancellation

calls in “comparable timeframe to sign-up calls.”⁴¹¹ They also suggested telephone answering systems should not be limited to normal business hours if they are entirely automated. The State AGs further asked the Commission to incorporate the guidance for telephone cancellation from the 2021 Enforcement Policy statement, for example, ensuring “the calls are not lengthier or otherwise more burdensome than the telephone call the consumer used to consent to the negative option feature,” and prohibiting sellers from “hang[ing] up on consumers who call to cancel; plac[ing] them on hold for an unreasonably long time; provid[ing] false information about how to cancel; or misrepresent[ing] the reasons for delays in processing consumers’ cancellation requests.”⁴¹²

(c) Proposed § 425.6(c)(3): In-person Cancellation

For in-person sales, proposed § 425.6(c)(3) required sellers to offer online or telephone call cancellation mechanisms in addition to the same in-person mechanism, where practical. The proposed Rule further required sellers not make telephone cancellation more costly than the method used to consent to the negative option feature.

Individual consumers identified the many ways in which demanding in-person cancellation is unfair. For instance, they observed it may not always be possible to cancel in person, as was true during the COVID pandemic,⁴¹³ after a consumer moves from the area,⁴¹⁴ or for people with young children or who have difficulty leaving their home.⁴¹⁵ Others

⁴¹¹ Law Professors, FTC–2023–0033–0861.

⁴¹² State AGs, FTC–2023–0033–0886.

⁴¹³ Individual commenter, FTC–2023–0033–0399 (“Even if I didn’t sign up online, terminating, a membership in person isn’t always possible. Lock down during Covid being a prime example.”).

⁴¹⁴ Individual commenter, FTC–2023–0033–0677 (“Companies are absolutely being deceptive about their practices when it comes to canceling a service, including their initial pitch to ‘Cancel anytime!’ only for you to find out that canceling requires you to go in person to a business in a place you might not even live anymore”).

⁴¹⁵ Individual commenter, FTC–2023–0033–0741 (“[m]any places . . . require you to go in person to cancel—they won’t even let you do it over the phone! This harms anyone that may have trouble leaving the house regularly, including disabled folks and parents of small children and those caring for older or ailing family members.”). See also TechFreedom, FTC–2023–0033–0872 (“Returning to the in-person venue where the initial sale occurred may be inconvenient, or even impossible, for the consumer.”); Individual commenter, FTC–2023–0033–1141 (“Sometimes an unexpected move or unforeseen circumstances make it impossible to cancel in person. I would like to see an option to be able to cancel remotely, even if the subscription was purchased on site.”).

⁴⁰¹ Individual commenter, FTC–2023–0033–0215 (“If you signed up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel.”); Individual commenter, FTC–2023–0033–0847; Anonymous commenter, FTC–2023–0033–0040 (“My negative experience was that it was a simple ‘click’ on-line to sign up for a service but to cancel same service it took three phone calls and hours of my time. If I can sign up with a ‘click’ then I SHOULD be able to cancel with a ‘click.’”).

⁴⁰² RILA, FTC–2023–0033–0883.

⁴⁰³ ESA, FTC–2023–0033–0867; ANA, FTC–2023–0033–1001.

⁴⁰⁴ NCTA, FTC–2023–0033–0858; PDMI, FTC–2023–0033–0864; CTA, FTC–2023–0033–0997; ANA, FTC–2023–0033–1001.

⁴⁰⁵ See, *e.g.*, ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000.

⁴⁰⁶ See, *e.g.*, IAB, FTC–2023–0033–1000; MIA, FTC–2023–0033–1008; see also RILA, FTC–2023–0033–0883 (enrollment online, *e.g.*, internet-based mobile applications, should be allowed through seller’s website).

⁴⁰⁷ See, *e.g.*, ESA, FTC–2023–0033–0867.

⁴⁰⁸ USTelecom, FTC–2023–0033–0876; CTIA, FTC–2023–0033–0866 (“imperative that businesses are able to have a live representative speak with a customer seeking to cancel, regardless of the medium used to sign up”); NCTA, FTC–2023–0033–0858; (“Whatever these consumers’ reasons for seeking to cancel or modify services, in most instances they are best served by speaking with a live agent, even if they enrolled online.”); see also Chamber, FTC–2023–0033–0885 (subscriptions to multiple products or services “require[] more time and personal assistance to address when a customer seeks to cancel only one of such related products or services”).

⁴⁰⁹ Sonsini Alarm Clients, FTC–2023–0033–0860; see also Joint Alarm Industry Comments—ESA, TMA, SIA and AICC, FTC–2023–0033–1014 (asking for clarification that alarm companies can require written or verbal confirmation of online cancellation requests). The concerns raised by these industries are likely an artifact of the Saves provision, which, as proposed, could be interpreted to prevent verification procedures and cancellation intent. The Commission addresses these concerns in section VII.B.6.c.

⁴¹⁰ N/MA, FTC–2023–0033–0873.

complained they showed up numerous times in person, only to be told they could not cancel because the manager was not available.⁴¹⁶ One commenter complained sellers demanded consumers cancel by certified mail if they originally consented in person.⁴¹⁷

In contrast, two trade associations requested the Commission allow sellers to require consumers to cancel in person if they signed up in person. These commenters argued such a limitation is appropriate due to the unique challenges of their industries. For example, IHRSA, which represents the health and fitness industry, stated, “it is appropriate for a brick-and-mortar business” to require customers to cancel in person “to verify their identity.” The International Carwash Association (“ICA”) stated some of its members sell products and services exclusively in person; therefore, it asked the Commission to not “force” these small business owners “to set up an online marketplace” to process cancellations if the seller does not already have an online presence.⁴¹⁸

(2) Analysis

(a) *The Commission retains the general “same medium” requirements of § 425.6(c).*

Based on the record, the final Rule retains the general requirements proposed in § 425.6(c); specifically, the negative option seller must provide a simple cancellation mechanism through the same medium (such as internet, telephone, mail, or in-person) the consumer used to consent to the negative option feature. Further, the final Rule retains § 425.6(a) that requires sellers to provide consumers with a simple mechanism to immediately stop charges that is cost-effective, timely, and easy to use. Such a mechanism cannot include “unreasonable barriers to cancellation or impede the effective operation of promised cancellation procedures.”⁴¹⁹ This provision makes

adding language from the 2021 Enforcement Policy Statement or the New York statute unnecessary because the simple mechanism provision already includes it. Further, several commenters asked the Commission to allow consumers to choose additional, alternate means of cancellation.⁴²⁰ This modification, however, is also unnecessary. The “same medium” requirement presents a floor, not a ceiling. That is, it only requires businesses to offer consumers the ability to cancel in the manner they were able to sign up. Sellers are free to provide additional cancellation mechanisms, giving consumers choices.

Moreover, despite some commenters’ assertions to the contrary, the Commission has clear authority to issue a rule requiring sellers to offer cancellation through the same medium as enrollment. As detailed in section VII.A, there is a substantial record demonstrating the negative option practices covered by this Rule are unfair or deceptive, prevalent, and have caused significant consumer harm.⁴²¹ Moreover, Magnuson-Moss empowers the Commission to promulgate requirements designed to prevent any unfair or deceptive practice it identifies with specificity.⁴²² By promulgating a rule that prevents sellers from making cancellation unreasonably difficult, the Commission has done so here. Further, while ROSCA does not provide for APA rulemaking, it does not limit the Commission’s authority to issue a trade regulation rule.⁴²³ In fact, the

mechanism proposed in the Rule should remove barriers, such as unreasonable hold times or verification requirements).

⁴²⁰ See, e.g., N/MA, FTC–2023–0033–0873 (subscribers should be allowed to choose method most convenient; subscribers who sign up by mail may prefer to cancel online or by telephone, and consumers who subscribed by telephone may prefer to cancel online); Sirius XM, FTC–2023–0033–0857 (“For example, requiring a customer to use direct mail to cancel if the customer used direct mail to accept a subscription offer would be inconvenient for the customer and not the customer’s expected or desired means for cancellation. Instead, the cancellation method should be an easy-to-use mechanism for a consumer to stop recurring charge which would closely track consumer expectations and allow for changes in technology.”); State AGs, FTC–2023–0033–0886 (“We respectfully suggest requiring sellers to allow *all* consumers to cancel through *any* medium that the seller uses to sell subscriptions or memberships, regardless of the medium through which that particular consumer signed up.”).

⁴²¹ See generally section VII.A.

⁴²² 15 U.S.C. 57a(a)(1)(B).

⁴²³ NPRM, 88 FR 24716 n.9. Although, as stated in the NPRM, Congress did not direct the FTC to promulgate implementing regulations, it certainly did not preclude them, and the language contained in ROSCA confirms the FTC’s authority to do so. 15 U.S.C. 8404(a) (“Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule. . . .”); see also *id.*

Commission’s Negative Option Rule predates ROSCA, and the statute does not rescind that Rule.

(b) *The Commission modifies the requirements of § 425.6(c)(1): Online Cancellation.*

In response to comments, the Commission makes several changes to clarify the online cancellation mechanism requirements. First, it removes the requirement that, for website or web-based applications, cancellation must be afforded through the same precise means as consent. Instead, the final Rule provides the simple cancellation must be easy to find. Second, the revised provision incorporates a definition of “interactive electronic medium” in place of “internet.” Third, the Commission excludes cancellation mechanisms requiring interaction with a live or virtual agent, unless the consumer consented to the negative option feature through such mechanism. Each modification is discussed below.

(i) *The simple cancellation mechanism must be easy to find.*

Consumers uniformly opposed having to engage with a representative to cancel when they could simply click a button to enroll.⁴²⁴ They also expressed deep

8404(b) (“Any person who violates this chapter or any regulation prescribed under this chapter” shall be subject to penalties); *id.* 8404(c) (“Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.”).

⁴²⁴ Individual commenter, FTC–2023–0033–0003 (“When signing up, I didn’t talk to a single individual. So its fair that when cancelling, I should not have to talk to a single individual.”); Individual commenter, FTC–2023–0033–0006 (was forced to call “and speak with several agents” because unable to cancel online); Anonymous commenter, FTC–2023–0033–0044 (shouldn’t be forced to make a phone call and sit on hold for hours if signed up online); Individual commenter, FTC–2023–0033–0072 (fair to consumers to allow consumers to cancel through same means as they were initiated); Individual commenter, FTC–2023–0033–0087 (“I think any offer you can buy with a click should also be an offer to unsubscribe with a click”; having to call instead is a scam); Anonymous commenter, FTC–2023–0033–0095 (“I would like to specify that [company] did not allow to terminate the account online. They specifically requested a phone call, which they then ignored for as long as possible. This practice is unfair and deceptive and needs to be outlawed.”); Anonymous commenter, FTC–2023–0033–0097 (FTC should ban practice of companies only offering cancellation via phone call, despite not requiring a phone call for signup); Individual commenter, FTC–2023–0033–0274 (“having to call the company to cancel when the party clicked on the website is forced verbal speech”); Individual commenter, FTC–2023–0033–0356 (“If you signed up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel. I am tried [sic] of calling some call center, waiting on hold, and then having someone go through a long script about why I should not cancel. Generally make it as easy to cancel as to sign up.”); Individual commenter, FTC–2023–0033–0379 (“I have now been charged for a full month because I have to call and speak

⁴¹⁶ See, e.g., Individual commenter, FTC–2023–0033–0510 (“I had to go in person 3 different times because the manager wasn’t there so to cancel it”).

⁴¹⁷ Individual commenter, FTC–2023–0033–0007 (“I work dispute resolutions for a bank. I see so many cases where someone is trying to cancel something like a gym membership and, while they can sign up in person, they for some reason have to mail a certified letter to the [company’s] home office. That has always seemed unreasonable and deliberately contrived.”).

⁴¹⁸ ICA, FTC–2023–0033–1142. ICA’s comment seems to suggest a misunderstanding that the Rule would require both telephone and online cancellation for in-person consent. It does not. A business may elect either online or telephone (or both), but there must be at least one mechanism in addition to in-person cancellation.

⁴¹⁹ EPS, 86 FR 60823; see also NPRM, 88 FR 24728 (explaining the simple cancellation

frustration over having to hunt to find cancellation mechanisms, usually buried deep within a website or in fine print on a bill or other correspondence.⁴²⁵ The Commission has brought numerous cases alleging these practices are unfair or deceptive.⁴²⁶ The proposed Rule sought to prevent these unfair and deceptive practices by requiring sellers to provide an easily accessible online cancellation mechanism to consumers who enrolled

to a representative instead of clicking to cancel.”); Individual commenter, FTC–2023–0033–0443 (“If the public is allowed to set up an account online we should be allowed to cancel online without ever making a phone call. The consumer should have more rights than corporations.”); Individual commenter, FTC–2023–0033–0617 (“It is truly obnoxious to be able to click to join but have to research to find the way to cancel, often involving making a phone call and being left on hold.”); Individual commenter, FTC–2023–0033–0716 (“We shouldn’t have to call the company to cancel!”); Individual commenter, FTC–2023–0033–0788 (requiring a call when enrolled online is “coercive and unfair”); Individual commenter, FTC–2023–0033–0822 (“I am sick of having to call a phone number to cancel something I signed up for on line, and often speaking to someone who is snide, sarcastic, or downright rude!”).

⁴²⁵ Individual commenter, FTC–2023–0033–0065 (“Often a company makes it significantly more difficult to even find out where or how to cancel a subscription.”); Individual commenter, FTC–2023–0033–0024 (“It took a Google search to find the right Customer Service number because it was hidden or unavailable on the website.”); Individual commenter, FTC–2023–0033–0084 (finally found corporate number to cancel trampoline park after scouring website for a membership enrolled online); *see also* Individual commenter, FTC–2023–0033–0067 (“why are they allowed to sign you up for automatic renewal with no way to cancel nothing on their web page in order to cancel a subscription”); Individual commenter, FTC–2023–0033–0071 (biggest annoyance is that subscriptions can be signed up for so easily with a few buttons on the remote but nearly impossible to cancel); Anonymous commenter, FTC–2023–0033–0108 (“I certainly hope this goes through. These companies make it incredibly difficult to even find the cancel or opt out option.”); Anonymous commenter, FTC–2023–0033–0123 (“Straight forward plain language cancellation instructions that are easy to locate should be required.”); Individual commenter, FTC–2023–0033–0124 (“Clearly there should be an easy way to unsubscribe that is easy to find.”); Individual commenter, FTC–2023–0033–0560 (cancellation page should be easy to find); Individual commenter, FTC–2023–0033–0642 (“If you signed up online, you should be able to cancel online. If it took one click to join, it should take one click to cancel. I have had trouble finding where to cancel on multiple subscription services. Often, they are confusing on purpose to keep customers like me trapped in the payment cycle. Some require an email or phone call to a separate customer service representative. Cancelling should not be harder than signing up for their service.”); Individual commenter, FTC–2023–0033–0685 (“I am tired of having to screen grab the fine print to figure out my options for cancelling subscriptions—it just shouldn’t be this hard!?”); Ashley Sheil on behalf of Maynooth University and in collaboration with Radboud University, FTC–2023–0033–1006 (observing that companies may take advantage of the “as easy as” requirement, and recommending any termination button should be highlighted and in an obvious location).

⁴²⁶ *See* n.385 (citing simple cancellation cases).

online.⁴²⁷ As several commenters rightly noted, however, consumers may not always expect (and it may not always be possible) to use the same precise means for both enrollment and cancellation.⁴²⁸

Accordingly, to clarify the intent of the original language and to better match consumer expectation with actual cancellation procedures, the Commission now clarifies that where a consumer enrolls online, whether through a website, a mobile application, chat, email, or messaging, consumers must be afforded an equally simple online cancellation experience, *i.e.*, one that allows them easily to find and use the cancellation mechanism.⁴²⁹

Many commenters agreed consumers would consider a link or button located on a website or within a user’s account or device settings to be “easy to find.”⁴³⁰ Providing a clearly-labeled

⁴²⁷ NPRM, 88 FR 24728 (“On the internet, this ‘Click to Cancel’ provision requires sellers, at a minimum, to provide an accessible cancellation mechanism on the same website or web-based application used for sign-up.”).

⁴²⁸ *See, e.g.*, ESA, FTC–2023–0033–0867 (“Such a requirement would not be helpful for players seeking to cancel a subscription, as in-game is not the place that most players would expect to find a cancellation ingress.”); RILA, FTC–2023–0033–0883 (“The method that a consumer uses for initial sign-up may not be the place where that consumer would expect to find a simple cancellation function. For example, contracts are also increasingly concluded online through third parties or via social media apps. Regardless of how a customer initially signs up, once she/he establishes a purchasing arrangement with a seller, the customer will logically look to the seller to cancel the arrangement.”).

⁴²⁹ The Chamber asked the Commission to clarify that web-based chat is an appropriate cancellation where a consumer signs up online. As is clear from the record, unless the seller required the consumer to engage with an agent through a web-based chat to enroll, the Rule will preclude requiring the consumer to do so to cancel. There is substantial evidence this asymmetrical practice of requiring consumers to engage with agents (live or virtual) for cancellation but not enrollment is one of the principal methods sellers use to create unfair and deceptive cancellation procedures. Accordingly, it is appropriate to include limitations within the Rule to prevent unscrupulous sellers from using such practices.

⁴³⁰ Individual commenter, FTC–2023–0033–0124 (“Clearly there should be an easy way to unsubscribe that is easy to find.”); Individual commenter, FTC–2023–0033–0252 (“I had been thinking of contacting my Governor to suggest just such a rule that the method provided for signing up for a service must also be provided for cancelling the same service, be just as easy to find, and require no more steps than it took to sign up.”); Individual commenter, FTC–2023–0033–0560 (“And ensure the bill is explicit with requirement to make it EASY TO FIND HOW TO REACH the company or cancellation page.”); Individual commenter, FTC–2023–0033–0640 (“The Federal Trade Commission needs to make it mandatory for companies to have an easy to find button to cancel a subscriptions -online-.”); Individual commenter, FTC–2023–0033–0784 (“And the cancel button should be easy to find and as attractively marketed as an opportunity to extend a subscription (font size,

cancellation button in a consumer’s account or user settings is, thus, one example of a simple online cancellation mechanism.”); The Commission cautions, however, while such a mechanism need not be exactly the same as the consent mechanism, the seller cannot make it more difficult to use or find than the consent mechanism. For example, the seller cannot prominently label the mechanism within the account settings but make it difficult for consumers to find the account settings in the first instance.

Further, the Commission emphasizes that the cancellation mechanism must be easy to find at the time the consumer decides to cancel. Providing an easy-to-find mechanism at consent does not mean the mechanism will be easy to find later when the consumer wants to cancel, and therefore will not prevent unreasonable barriers to cancellation. Thus, providing the information necessary to find the cancellation mechanism at enrollment (as required under § 425.4) does not discharge the seller’s obligation to ensure cancellation is easy to find when most relevant to the consumer.⁴³²

(ii) “Interactive electronic medium” is broadly defined to include all methods of electronic communication.

The State AGs asked the Commission specifically to address the requirements for cancellation by chat, text messaging, and email. The State AGs explained that although chat and text are increasingly common cancellation mechanisms, they share some of the same qualities and potential problems as telephone cancellation because they require interaction with a live or virtual customer representative.⁴³³ Further, the State AGs suggested email should not be an acceptable cancellation medium for online consent.⁴³⁴

To address these concerns, the Commission revises the proposed provision to refer to “interactive electronic medium” rather than “internet.” This change clearly includes text, chat, and email within the scope of online cancellation mechanisms.

colors, etc.).”); Individual commenter, FTC–2023–0033–1006 (cancellation should be highlighted and in an obvious location).

⁴³¹ *See, e.g.*, Cal. Bus. & Prof. Code § 1702(d)(1)(A); Conn. Gen. Stat. Ann. § 42–158ff (d)(1)(A); N.J. Stat. Ann. § 56:8–42.1.a.

⁴³² *See, e.g.*, Individual commenter, FTC–2023–0033–0022 (“Note that subscriptions are by their very nature long lasting in time, therefore requirements should not just emphasize some fine print disclosure at the time of sign up but also it should be easy to check back with the company or their many layers of subcontractors to cancel at anytime in the future.”).

⁴³³ State AGs, FTC–2023–0033–0886.

⁴³⁴ *Id.*

Specifically, the phrase “interactive electronic medium” used in the “clear and conspicuous” definition includes all media that involve electronic communications (except telephone calls), whether or not they strictly use the internet (and thus would otherwise be “online”). Consumers may not know whether a text or chat is MMS (online) or SMS (offline), for example. This broader definition should provide flexibility to sellers while continuing to require parallel cancellation and sign-up procedures to meet consumers’ expectations.

Although the State AGs suggested prohibiting the use of email as a cancellation mechanism, the record provides no basis for doing so. Further, consistent with the Commission’s definition of interactive electronic medium, several States specifically allow sellers to use email as an online cancellation method.⁴³⁵ Thus, the final Rule does not bar the use of email to effectuate online cancellation.

(iii) No interaction with representatives for online cancellation.

The State AGs noted, and consumer comments further support, the fact that sellers have often used chat, text, and messaging to perpetrate the same abuses documented for telephone cancellation. The Commission, therefore, reiterates all cancellation mechanisms, including chat, text, messaging, and email, are subject to the same “simple” requirements, *i.e.*, sellers may not erect unreasonable barriers or prevent consumers from immediately halting charges. Cancellation mechanisms must be as easy to use as the mechanism the consumer used to sign up, in terms of time, expense, burden, and ease of use; and the mechanism must be as readily accessible as the means the consumer used to consent in the first place.

Consumer comments, as well as the Commission’s and State AGs’ enforcement experience demonstrate asymmetrical enrollment and cancellation experiences, such as requiring telephone cancellation when consumers can easily sign up online

without speaking with an agent, are unfair. Specifically, this asymmetry creates unreasonable barriers to cancellation, such as unreasonable hold times, unreasonable verification requirements, and aggressive save tactics. Moreover, comments and the Commission’s enforcement experience indicate consumers likely understand a simple online enrollment experience as an implied claim that the cancellation experience also will be simple.⁴³⁶ As consumers themselves explain, they do not anticipate engaging with a customer service representative (whether by phone, or through a web-based chat or messaging) if they did not do so to sign up for the negative option feature.⁴³⁷ Thus, the Commission further clarifies, for online consent, the seller cannot require the consumer to engage with an agent or customer service representative to cancel unless the consumer did so at enrollment.⁴³⁸

Finally, the Commission declines to exclude industries providing bundled services from the same medium requirement. NCTA and other industries with such services insisted their customers are better served by speaking with a live representative, even when they enroll online.⁴³⁹ They expressed concern these sellers cannot confirm a consumer’s cancellation intent (consumers may want to modify or renegotiate services) or apprise consumers of any negative consequences of cancellation (loss of

⁴³⁶ See nn.362–369; see also vlogbrothers, Why isn’t this illegal?, <https://www.youtube.com/watch?v=FjAw1LMSHIA&pp=ygUMdmxvZ2Jyb3RoZXJz> (last visited Aug. 25, 2024).

⁴³⁷ See, e.g., Anonymous commenter, FTC–2023–0033–0024 (could not cancel online even though consumer could upgrade online and via TV); Individual commenter, FTC–2023–0033–0137 (“3 months to cancel, 3 minutes to sign-up. Seriously?”); Individual commenter, FTC–2023–0033–0252 (detailing three instances where consumer signed up online with a few clicks but was required to call to cancel, concluding “the method provided for signing up for a service must also be provided for cancelling the same service, be just as easy to find, and require no more steps than it took to sign up.”); Individual commenter, FTC–2023–0033–0457 (“If I enrolled in a subscription online, there are no good reasons why I can’t disenroll that way as well. Forcing me to call a number to unsubscribe, which is only staffed during ‘normal business hours,’ unnecessarily complicates the process”); Anonymous commenter, FTC–2023–0033–0802 (this practice of making someone call or chat to someone to cancel a membership is predatory).

⁴³⁸ The Chamber asked the Commission to “make clear that a web-based chat qualifies as an appropriate cancellation mechanism where a customer signed up for a service online.” FTC–2023–0033–0885. The Commission reiterates that a web-based chat cancellation mechanism may be appropriate, but only if the consumer enrolled through a virtual or live agent.

⁴³⁹ NCTA, FTC–2023–0033–0858; CTIA, FTC–2023–0033–0866.

access to emergency services, for example) without a live discussion.⁴⁴⁰ They further assert providing this information online could be complicated and expensive for the seller and not what the consumer would prefer.⁴⁴¹ NCTA noted only 30% of its members’ customers sign up online, with the remaining 70% enrolling in person or over the phone.⁴⁴²

NCTA’s comment seems to suggest the simple cancellation mechanism requirement demands a certain asymmetry—specifically, no matter how complex online enrollment is, the proposed Rule would require a simple “one click” cancellation mechanism, which could preclude the seller from confirming cancellation intent or apprising consumers of negative consequences of cancellation. The Commission reiterates the simple cancellation requirement requires symmetry in terms of, *inter alia*, time, burden, expense, and ease of use. It does not require use of the exact same mechanism.

Further, existing verification procedures, such as two-factor authentication, are routinely used to ensure a consumer’s identity in highly sensitive situations. Thus, they are more than sufficient to ensure the correct person is cancelling and do not require the use of a cancellation mechanism different than enrollment. Moreover, at this juncture, the Commission has removed the proposed “saves” provision from the final Rule, making communication regarding material consequences of cancelling easier to convey (so long as communicating through the same medium).

(c) The Commission adopts § 425.6(c)(2): Telephone Cancellation as proposed, with one exception.

The Commission adopts the telephone cancellation provision as proposed, except the final Rule removes the requirement sellers must assure all calls are answered during normal business hours. Instead, the final Rule requires sellers to promptly effectuate cancellation requests by consumers via a telephone number that is answered or records messages during normal business hours.

Several commenters suggested specific changes were necessary to enhance the proposed telephone medium requirements. For instance, the State AGs asked the Commission to include the various requirements detailed in the 2021 Enforcement Policy Statement, e.g., require negative option

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² NCTA, FTC–2023–0073–0008.

⁴³⁵ See, e.g., Cal. Bus. & Prof. Code § 17602 (“The business shall provide a method of termination that is online in the form of either of the following: By an immediately accessible termination email formatted and provided by the business that a consumer can send to the business without additional information.”); Conn. Gen. Stat. Ann. § 42–158ff (an electronic mail message from the business to the consumer, which is immediately accessible by the consumer and to which the consumer may reply without obtaining any additional information); N.J. Stat. Ann. § 56:8–42.1 (a termination email formatted and provided by the subscription service provider that a consumer can email to the subscription service provider without being required to provide any additional information).

sellers “not [to] erect unreasonable barriers to cancellation or impede the effective operation of promised cancellation procedures, and . . . honor cancellation requests that comply with such procedures.” However, the proposed provisions already include these requirements.⁴⁴³

Nonetheless, several commenters correctly pointed out requiring sellers to answer cancellation calls during normal business hours could create considerable costs for small businesses while not directly addressing the core problem identified by the Commission—the unreasonable delay of cancellation requests. To address these concerns, the Commission first clarifies normal business hours are those hours in which the business would normally engage with its customers. A seller, however, cannot make telephone cancellation available only at times that are so inconvenient they erect a barrier to cancellation. For instance, it would be improper to limit cancellation calls to only between midnight and 3 a.m., regardless of whether these are the seller’s normal business hours. Importantly, however, the final Rule does not require a seller to physically answer the telephone call (a task that could be difficult for, e.g., a sole proprietorship). An answering machine that clearly provides for cancellation (e.g., a message stating: if you want to cancel your subscription please identify that subscription, and leave identifying information) would comply with this provision of the Rule. To effectuate the provision’s intent, the final Rule states sellers, whether answering the cancellation call in person or not, must effectuate that cancellation promptly. Thus, a seller could not, for example, have an answering machine it does not regularly monitor or for which it does not promptly effectuate cancellation requests.

Notably, the final Rule retains the requirement that, for the mechanism to be at least as simple as the one used to initiate the recurring charge, any cancellation call cannot be more expensive than the call used to enroll (e.g., if the sign-up call is toll free, the cancellation call must also be toll free). Consumers would not expect such fees, rendering them unfair or deceptive.⁴⁴⁴

⁴⁴³ E.g., the requirements that all cancellation mechanisms be simple and easy to use (§ 425.6), and the seller disclose where to find the cancellation mechanism prior to the sale (§ 425.4).

⁴⁴⁴ Cf. *United States v. Adobe, Inc.*, No. 5:24-cv-03630 (N.D. Cal. 2024) (cancellation fees plead as a failure to disclose and failure to obtain consent to charge in violation of ROSCA); *FTC v. FloatMe Corp.*, No. 5:24-cv-00001 (W.D. Tex. 2024) (extra cost in relation to timing of receipt of product

(d) *The Commission adopts § 425.6(c)(3): In-Person Cancellation as proposed.*

Based on the Commission’s experience and that of other States, as well as many comments in the record, requiring in-person cancellation presents significant opportunities for unfair and deceptive practices. To prevent such practices, the final Rule adopts provision 425.6(c)(3) essentially as proposed. Thus, the provision continues to require in-person sellers to provide alternatives to in-person cancellation, either online or by phone, at the seller’s choice. The Commission, however, corrects the requirement that if the alternative is a telephone call, the call cannot be more costly than the in-person consent. That proposal connected two unrelated costs and thus did not make logical sense. To effectuate the purpose of this provision, however, the Commission adds language stating the call cannot impose any cost that creates an unreasonable barrier to cancellation, including by making the call unreasonably expensive.⁴⁴⁵

deceptive in violation of section 5); *United States v. Cerebral, Inc.*, No. 1:24-cv-21376 (S.D. Fla. 2024) (delays in cancellation deceptive and injured consumers in violation of section 5); *FTC v. Bridge It, Inc.*, No. 1:23-cv-09651 (S.D.N.Y. 2023) (claims to cancel at any time without paying any fees, interest, or other charges deceptive); *FTC v. Vonage Holdings Corp.*, No. 3:22-cv-06435 (D.N.J. 2022) (requiring phone cancellation with roadblocks including long hold times, frequent disconnects, endless loops, and early termination fee unfair under section 5); *FTC v. Benefytt Techs., Inc.*, No. 8:22-cv-01794 (M.D. Fla. 2022) (unexpected cost for additional product is deceptive and unfair); *In re Dun & Bradstreet, Inc.*, FTC Docket No. C-4761 (2022) (renewal practices, including at end of designated time periods, deceptive); *FTC v. First Am. Payment Sys.*, No. 4:22-cv-00654 (E.D. Tex. 2022) (misrepresentations in cancellation and unfair debiting); *United States v. MyLife.com, Inc.*, No. 2:20-cv-6692 (C.D. Cal. 2020) (cancellation by phone discouraged or prevented by unavailable or uncooperative agents specified as a violation of ROSCA); *FTC v. Match Grp., Inc.*, No. 3:19-cv-02281 (N.D. Tex. 2019) (pleading cancellation difficulties in violation of ROSCA); *In re Urthbox, Inc.*, FTC Docket No. C-4676 (2019) (unexpected charges, including for a full 6 months following the first month of free trial, are a failures to disclose in violation of section 5); *FTC v. Cardiff*, No. 5:18-cv-02104 (C.D. Cal. 2018) (unexpected charges a section 5 misrepresentation and unfair charging); *FTC v. BunZai Media Grp., Inc.*, No. 2:15-cv-04527 (C.D. Cal. 2015) (failure to disclose charge as deceptive and unfair); *FTC v. Tarr*, No. 3:17-cv-02024 (S.D. Cal. 2017) (failure to disclose material terms deceptive and unfair); *FTC v. AdoreMe, Inc.*, No. 1:17-cv-09083 (S.D.N.Y. 2017) (cancelling made difficult by phone, contributing to misrepresentations regarding store credit); *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017) (unexpected product deceptive); *FTC v. AAFE Prods. Corp.*, No. 3:17-cv-00575 (S.D. Cal. 2017); *FTC v. Health Formulas, LLC*, No. 2:14-cv-01649 (D. Nev. 2014) (deceptive costs).

⁴⁴⁵ N/MA suggested there may be instances where the original method of consent is no longer available. FTC-2023-0033-0873. For example, if the person signed up a trade show in person,

To address ICA’s concerns, the Commission clarifies the Rule does not require sellers who sell in-person to maintain an alternative online presence to process cancellations. Sellers who have no such presence can allow cancellations by phone if they comply with the simple telephone cancellation requirements detailed above.

(c) § 425.6(d) Saves

(1) Summary of Comments

Proposed § 425.6(d) would have required sellers to immediately effectuate cancellation unless they obtained the consumer’s unambiguously affirmative consent to receive a save prior to cancellation. The Commission explained the record shows many businesses have created unnecessary and burdensome obstacles to cancellation, including forcing uninterested consumers to sit through multiple upsells before allowing them to cancel.⁴⁴⁶ Individual consumer commenters corroborated the pervasive use of such unfair tactics to thwart cancellation.⁴⁴⁷

returning to the in-person venue may be impossible. The Commission notes the in-person method only must be made available, “where practical.”

⁴⁴⁶ NPRM, 88 FR 24729.

⁴⁴⁷ See, e.g., Individual commenter, FTC-2023-0033-0006 (“Last year I had the pleasure of trying to cancel a radio subscription which took 2 attempts and far too much time to accomplish. Unable to cancel online, I was forced to call and speak with several agents trying to convince me to keep their service. After nearly a half hour of insisting I wanted to cancel, they simply hung up on me which forced me to start the cancellation process all over again from the beginning.”); Anonymous commenter, FTC-2023-0033-0024 (able to cancel only after listening to a “long sale pitch about why he shouldn’t”); Anonymous commenter, FTC-2023-0033-0066 (when you request a cancellation, will pass your call on to a more “experienced representative” in an attempt to convince you to keep your service. They do not listen to your concerns, instead make you jump through hoops for a cancellation which makes me not want to be one of their customers even more); Individual commenter, FTC-2023-0033-0071 (call to cancel and they repeatedly said “well let’s just see how we can save you money” instead of canceling); Individual commenter, FTC-2023-0033-0082 (“You have to call them and endure a high pressure pitch to renew . . . It wastes time and minutes on your phone bill”); Anonymous commenter, FTC-2023-0033-0097 (the only way to cancel a service is to call them on the phone, intended to allow for sales reps to make a pitch); Individual commenter, FTC-2023-0033-0120 (“However, when you attempt to cancel a continuous subscription you are told you cannot do that and you must call the provided phone number. You are connected to a sales person who then will negotiate with you to continue at a lower rate.”); Individual commenter, FTC-2023-0033-0125 (“The only way for me to cancel this service was to CALL THEM DIRECTLY, whereupon they spent nearly half an hour trying to upsell me into a two year subscription.”); Individual commenter, FTC-2023-0033-0130 (“It should not be required to call (and sit on hold forever), only to have to sit through a diatribe of hard-sell techniques to try to convince

Continued

one not to cancel.”); Individual commenter, FTC–2023–0033–0233 (“I had to wait on hold and then get sales pitch after sales pitch after sales pitch to cancel a digital-only [newspaper] subscription that I signed up for online.”); Individual commenter, FTC–2023–0033–0228 (had difficulty canceling a newspaper subscription of all things as it required consumer to call an 800 number during the day and then had to listen to multiple sales pitches and saying “No! What part of ‘no’ don’t you understand” to cancel); Individual commenter, FTC–2023–0033–0312 (“I and members of my family have had to use valuable time to call corporations to cancel subscriptions, each time getting a long pitch to keep the subscription. If I wanted to keep it, I would not be calling to cancel it.”); Individual commenter, FTC–2023–0033–0356 (“If it took one click to join, it should take one click to cancel. I am tired of calling some call center, waiting on hold, and then having someone go through a long script about why I should not cancel.”); Individual commenter, FTC–2023–0033–0457 (Forcing me to call a number to unsubscribe, which is only staffed during “normal business hours,” unnecessarily complicates the process for the provider’s benefit: I don’t need to give opportunity to upsell or persuade me to continue at a reduced price.); Individual commenter, FTC–2023–0033–0491 (“Some have even required me to make a phone call and listen to a hard sell before they will cancel the service.”); Individual commenter, FTC–2023–0033–0597 (have to sit and turn down multiple offers to cancel); FTC–2023–0033–0677 (sit and “suffer through a long sales pitch” to cancel); Individual commenter, FTC–2023–0033–0784 (“I suggest limiting the seller’s efforts to pitch additional offers & modifications when trying to cancel . . . no one wants to wade through too many of screens until the cancel ‘finally’ appears.”); Anonymous commenter, FTC–2023–0033–0785 (person being “penalized by losing time waiting to speak to a customer service rep, having to decline further sales, or being stuck with recurring charges they don’t want”); Individual commenter, FTC–2023–0033–0798 (difficult to cancel subscriptions, including by repeatedly forcing the customer to turn down “special offers” to entice the customer not to cancel); Individual commenter, FTC–2023–0033–0815 (No reason to have to call customer service reps who will keep trying to prevent me from canceling); Individual commenter, FTC–2023–0033–0835; Individual commenter, FTC–2023–0033–0850 (Have to make a long awkward phone call and wait on hold or long repetitive live chat); Individual commenter, FTC–2023–0033–0913 (“I’ve experienced having to call to cancel a subscription only to be forced to listen to a sales spiel in order to do so.”); Individual commenter, FTC–2023–0033–0967 (“Some have even required me to make a phone call and listen to a hard sell before they will cancel the service.”); Individual commenter, FTC–2023–0033–0999 (Consumers should have an on-line option to cancel. A national media company ONLY provides a cancel option with a call to customer service. When doing so, you are met with a CS rep that will not accept your request to cancel, talks over you, continued harassment, making offer after offer. We must stop this deceptive practice.); Individual commenter, FTC–2023–0033–1063 (“Now I’m about to cancel my [company name] account. If it’s anything like the last time when I moved, I expect to spend several hours dealing with multiple levels of salespeople, trying to convince me to stay.”); Individual commenter, FTC–2023–0033–1099 (Once customer service is contacted, it should not take more than about 90 seconds to cancel a subscription instead of the endless questions of why you want to cancel. Then try to keep you by offering a discounted rate on yet another year of useless service. Please make this end.); Individual commenter, FTC–2023–0033–1138 (The agent, made multiple attempts to sell me the service, disregarding my many direct statements

However, other commenters explained some of the “barriers” consumers complained about are necessary to prevent harm, at least in certain situations. Specifically, commenters noted consumers might not understand the negative consequences of cancellation,⁴⁴⁸ and the provision might prevent consumers from taking advantage of money-saving offers prior to cancellation.⁴⁴⁹ Some commenters also expressed confusion regarding whether verification or authentication procedures, or discussion of consumers’ attempts to pause or modify their existing offers, would violate the Rule.⁴⁵⁰ Finally, commenters noted the proposed provision requiring consumers to opt-in to saves could interfere with the simplicity of a cancellation mechanism.⁴⁵¹

(2) Analysis

Based on the record, the Commission determines revisions to this proposed provision are necessary, for which the Commission would need to seek additional comment. Therefore, the Commission does not adopt this provision in the final Rule at this time. On one hand, the record demonstrates saves are often used simply as a barrier to prevent cancellations.⁴⁵² On the other, the proposed opt-in save provision could have unintended consequences.⁴⁵³ Specifically, the provision may thwart attempts to confirm consumers’ intent or apprise consumers of any negative consequences of cancellation (*e.g.*, losing data). Moreover, the opt-in save provision may prevent consumers from obtaining valuable concessions (*e.g.*, lower prices), which they would otherwise want.

Consequently, the proposed saves provision did not achieve the right balance between protecting consumers

that I just wanted to cancel.); Individual commenter, FTC–2023–0033–1150 (They make you call their company so that sales retention can try to talk you into staying with freebies etc.); Individual commenter, FTC–2023–0033–1153 (There is no reason a person should be subjected to 20 minutes or repeated drilling if they say upfront that they want to cancel service.).

⁴⁴⁸ NCTA, FTC–2023–0033–0858; PDMI, FTC–2023–0033–0864; Chamber, FTC–2023–0033–0885.

⁴⁴⁹ *Id.*

⁴⁵⁰ *See, e.g.*, PDMI, FTC–2023–0033–0864; ANA, FTC–2023–0033–1001; CTIA, FTC–2023–0033–0866.

⁴⁵¹ *See, e.g.*, CCLIA, FTC–2023–0033–0984. Some commenters also argued the saves provision violates the First Amendment. *E.g.*, PDMI, FTC–2023–0033–0864; Chamber, FTC–2023–0033–0885; ACT App Association, FTC–2023–0033–0874. The Commission rejects this proposition. *See Mainstream Mktg. Servs., Inc. v. FTC*, 358 F.3d 1228 (10th Cir. 2004).

⁴⁵² *See* nn.447–448.

⁴⁵³ *See* nn.449–452.

from unfair tactics and allowing sellers to provide necessary and valuable information about cancellation. Therefore, the Commission will consider issuing an SNPRM in the future seeking a better solution to this difficult problem.

However, the Commission notes the removal of the saves proposal is not a license to erect unreasonable and unnecessary barriers to cancellation. The final Rule requires sellers to provide a simple, easy to use cancellation mechanism. Save attempts that interfere with this mandate by requiring consumers to navigate through upsells, jump through unreasonable hoops, or wait unreasonable amounts of time to cancel are neither simple nor easy.⁴⁵⁴

7. Proposed § 425.7 Annual Reminders

In the NPRM, the Commission proposed requiring sellers to provide an annual reminder to consumers for non-physical goods sold with a negative option feature. Under this proposal, reminders would have needed to identify the product or service, the frequency and amount of charges, and the means to cancel. Additionally, the proposal required Negative Option Sellers to provide the reminders through the same medium the consumer used to consent to the negative option feature. The Commission opined the delivery of physical goods may remind consumers they enrolled in a negative option feature. Therefore, these consumers effectively already receive reminders and can reasonably avoid further payments by canceling their subscription. For services lacking a regular, tangible presence (*e.g.*, data security monitoring or subscriptions for online services), however, many consumers may reasonably forget they enrolled and, consequently, incur charges for services they do not want or use. Thus, the Commission concluded, the failure to provide reminders for such contracts would meet all elements of unfairness.⁴⁵⁵ The Commission sought

⁴⁵⁴ *See, e.g., United States v. Adobe, Inc.*, No. 5:24–cv–03630 (N.D. Cal. 2024); *FTC v. Amazon.com, Inc.*, No. 2:23–cv–0932 (W.D. Wash. 2023).

⁴⁵⁵ NPRM, 88 FR 24729, citing FTC Policy Statement on Unfairness, appended to *In re International Harvester Co.*, 104 F.T.C. 949 (1984). “To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided.” *Id.*; *see also* 15 U.S.C. 45(n) (Commission has no authority to declare a practice unfair “unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not

comment on this proposal, including whether it should narrow the coverage of the proposed language, for example, by types of covered services or the duration between reminders.⁴⁵⁶

(a) Summary of Comments

The Commission received 32 comments in response.⁴⁵⁷ Consumers, public interest and consumer advocacy groups, and academics, among others, generally supported the reminder requirement, observing, for example, that “subscription-based products and services have become so widespread that consumers are having difficulty keeping track of them all.”⁴⁵⁸ The commenters asserted the proposed “annual notice will clearly inform consumers of the terms of the contract and how they may terminate the agreement.”⁴⁵⁹ Despite this support, virtually every group of commenters—individuals, consumer advocates, trade organizations, and industry groups—suggested the Commission modify or clarify its proposal.

Only three commenters specifically requested the Commission jettison a reminder provision altogether. Specifically, ESA argued the requirement (1) would impose a significant burden on businesses because several State laws already require reminders or notices; (2) would be improper because the Commission did not raise reminders in the ANPR; and (3) would increase the overall number of notices consumers receive, which could result in consumers ignoring reminders, thus benefiting bad actors. NCTA suggested the Commission should instead “allow businesses flexibility to determine whether to provide reminders.”⁴⁶⁰ IAB also “recommend[ed] that the Commission remove this requirement for several reasons.”⁴⁶¹ Both ESA and NCTA conceded, however, the Commission could adopt the provision with additional modifications, such as making the reminders optional (NCTA)

outweighed by countervailing benefits to consumers or to competition”).

⁴⁵⁶ NPRM, 88 FR 24729; *see also id.* at section XIII, Request for Comments (“The Commission seeks any suggestions or alternative methods for improving current requirements.”).

⁴⁵⁷ The Commission received comments from, *inter alia*, individual consumers; cable/broadband/communications industry groups; public interest and consumer advocacy groups; various trade associations representing traditional and digital marketing, technology, news and magazine media, gaming and entertainment, and retail industries; academic and public policy groups; and service contract and alarm company industries.

⁴⁵⁸ State AGs, FTC–2023–00330–0886.

⁴⁵⁹ Public Interest Groups, FTC–2023–0033–0880.

⁴⁶⁰ NCTA, FTC–2023–0033–0858.

⁴⁶¹ IAB, FTC–2023–0033–1000.

or offering consumers the ability to opt-out of subscription reminders (ESA).⁴⁶² Other commenters agreed, asking for “less prescriptive” requirements that would allow businesses more flexibility.⁴⁶³

Several commenters, while not urging the Commission to reject the reminder requirement, suggested the NPRM proposal did not satisfy the unfairness test. For instance, CTA, a technology trade association, questioned whether there was sufficient basis to find a lack of annual reminder is an unfair practice or causes consumer harm.⁴⁶⁴ Similarly, two other commenters from the communications industry questioned whether a lack of annual reminder would be unfair in the specific context of services that are “always on,” such as cable or wireless services.⁴⁶⁵

A few commenters asked to be exempted from the reminder requirement based on the nature of their industries or the frequency of existing notices.⁴⁶⁶ For instance, cable/broadband/wireless/streaming industry groups suggested they should be exempt for the same reasons they argued the unfairness test did not render the lack of reminders illegal in their industries. Similarly, these and other sellers, such as service contract providers, suggested consumers who receive monthly bills are already effectively receiving reminders, and therefore, these transactions should be exempt.⁴⁶⁷

Several commenters questioned the proposed requirement that sellers provide the annual reminder through the same medium the consumer used to consent to the negative option feature.⁴⁶⁸ For example, several

⁴⁶² ESA, FTC–2023–0033–0867; NCTA, FTC–2023–0033–0858.

⁴⁶³ *See, e.g.*, Sirius XM, FTC–2023–0033–0857 (asking Commission not to mandate exactly how renewal notices must be sent); N/MA, FTC–2023–0033–0873 (allow sellers to obtain consent to provide notice through alternate means); Chamber, FTC–2023–0033–0885 (proposed revisions); DCN, FTC–2023–0033–0983 (make annual notice an option company could comply with to provide adequate notice of obligations); ACT App Association, FTC–2023–0033–0874 (adopt a less prescriptive approach so same medium can be used to comply with State and Federal requirements).

⁴⁶⁴ CTA, FTC–2023–0033–0997 (no basis to conclude different medium is unfair, or that lack of reminders is unfair).

⁴⁶⁵ NCTA, FTC–2023–0033–0858 (lack of notice for “always on” services not unfair, injury reasonably avoidable); USTelecom, FTC–2023–0033–0876 (same).

⁴⁶⁶ *See, e.g.*, CTIA, FTC–2023–0033–0866 (exempt mobile services offered on a month-to-month basis); USTelecom, FTC–2023–0033–0876 (exempt broadband and communication services). The Commission addresses exemptions elsewhere in the SBP at sections VII.B.1 and VIII.

⁴⁶⁷ *See, e.g.*, Chamber, FTC–2023–0033–0885.

⁴⁶⁸ Sirius XM, FTC–2023–0033–0857; Kuehn, FTC–2023–0033–0871; N/MA, FTC–2023–0033–

commenters observed that requiring reminders through a telephone call could violate the TCPA, the TSR, or at minimum, be a nuisance, and thus ignored by consumers.⁴⁶⁹ Many of these commenters advocated for letting consumers choose how they want to receive annual reminders,⁴⁷⁰ or allowing sellers to provide reminders through any medium they typically use to communicate with consumers.⁴⁷¹

Additionally, several commenters disagreed with the Commission’s observation that agreements involving delivery of physical goods inherently create a “regular, tangible presence” that serves as a reminder of the contract.⁴⁷² For example, they noted some companies charge a monthly fee, but only deliver physical goods at the consumer’s request.

Some commenters stated that, without Federal preemption, the annual reminder requirement would create another layer of regulatory complexity because several State laws already require reminders or notices.⁴⁷³ In contrast, Professor Hoofnagle stated many “credit card processing service” providers likely afford a simple and inexpensive means for sellers to comply with State and Federal mandates “because policy changes can be made programmatically in dashboards.”⁴⁷⁴

Several commenters suggested the Commission amend the proposal. For instance, TINA and several individual consumers recommended the Commission require reminders at the end of a free trial period.⁴⁷⁵ Others suggested the Commission require more frequent reminders, such as every six

0873; Act App Association, FTC–2023–0033–0874; CTA, FTC–2023–0033–0997; Chamber, FTC–2023–0033–0885; ANA, FTC–2023–0033–1001.

⁴⁶⁹ Sirius XM, FTC–2023–0033–0857; Kuehn, FTC–2023–0033–0871; N/MA, FTC–2023–0033–0873; Chamber, FTC–2023–0033–0885; SCIC, FTC–2023–0033–0879.

⁴⁷⁰ Sirius XM, FTC–2023–0033–0857; Kuehn, FTC–2023–0033–0871; Chamber, FTC–2023–0033–0885; Public Interest Groups, FTC–2023–0033–0880.

⁴⁷¹ State AGs, FTC–2023–0033–0886.

⁴⁷² Individual commenter, FTC–2023–0033–0026; TINA, FTC–2023–0033–1139.

⁴⁷³ NCTA, FTC–2023–0033–0858; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000; ACT App Association, FTC–2023–0033–0874.

⁴⁷⁴ Hoofnagle, FTC–2023–0033–1137.

⁴⁷⁵ Individual commenter, FTC–2023–0033–0039 (not reminded “that the free trial was up”); Individual commenter, FTC–2023–0033–0045 (“consumer should get an email reminder their free period is about to end”); Individual commenter, FTC–2023–0033–0050 (businesses should “be required to provide advance notice that the free trial is about to expire.”); TINA, FTC–2023–0033–1139; ACT App Association, FTC–2023–0033–0874 (provide less prescriptive process).

months, or before each charge.⁴⁷⁶ They noted that under an annual notice requirement, a consumer could be charged up to 12 times before discovering a negative option feature.⁴⁷⁷ One commenter asked the Commission to require a reminder for so-called “zombie” agreements, ones that have long periods, *e.g.*, 24 months, of inactivity.⁴⁷⁸

In contrast, other commenters noted consumers may suffer from “notice fatigue” given the increasing popularity of subscription services.⁴⁷⁹ Some argued there is no evidence of tangible consumer benefit from additional notices, and consumers should be given a choice whether to opt-in to receive annual reminders (or more frequent reminders), or to opt-out.⁴⁸⁰ Three commenters suggested sending annual reminder notices could increase opportunities for phishing and other deceptive practices.⁴⁸¹

Finally, several commenters asked the Commission to clarify certain aspects of the reminder requirement. For instance, ANA asked the Commission to explain what constitutes the “same medium,” and a group of law professors asked for more detail about what constitutes an adequate telephone reminder.⁴⁸² Additionally, some commenters asked the Commission to clarify that sellers can rely on contact information provided by the consumer at the time of consent,⁴⁸³ or to provide that abiding by State reminder requirements satisfies a seller’s obligations under this provision.⁴⁸⁴

⁴⁷⁶ Public Interest Groups, FTC–2023–0033–0880 (“consumers deserve to know when they are about to be charged automatically, with a chance to opt out”); State AGs, FTC–2023–0033–0886; MIA, FTC–2023–0033–1008; Individual commenter, FTC–2023–0033–0026 (notification within one month of renewal, stating specific renewal date); Individual commenter, FTC–2023–0033–0708 (commenting that companies do not provide reminders before being charged, possibly overdrawing an account).

⁴⁷⁷ *See, e.g.*, Public Interest Groups, FTC–2023–0033–0880.

⁴⁷⁸ Law Professors, FTC–2023–0033–0861.

⁴⁷⁹ NCTA, FTC–2023–0033–0858; USTelecom, FTC–2023–0033–0876; CCIA, FTC–2023–0033–0985 (recommending a biannual reminder for longer subscriptions); and Coalition, FTC–2023–0033–0884; *see also* DCN, FTC–2023–0033–0983 (incorrectly states the current proposed rule would require monthly notice for month-to-month renewals).

⁴⁸⁰ NCTA, FTC–2023–0033–0858 (opt in); ESA, FTC–2023–0033–0867 (opt out); Chamber, FTC–2023–0033–0885 (opt in); DCN, FTC–2023–0033–0983 (opt out); Public Interest Groups, FTC–2023–0033–0880 (opt out).

⁴⁸¹ NCTA, FTC–2023–0033–0858; ESA, FTC–2023–0033–0867; DCN, FTC–2023–0033–0983.

⁴⁸² ANA, FTC–2023–0033–1001 (same medium); Law Professors, FTC–2023–0033–0861 (adequate phone reminder).

⁴⁸³ Sirius XM, FTC–2023–0033–0857; NFIB, FTC–2023–0033–0789.

⁴⁸⁴ ACT App Association, FTC–2023–0033–0874.

(b) Analysis

After reviewing these comments, the Commission determines it needs additional information on the scope and particularities of the proposed annual reminder requirement. The record suggests, given the proliferation of subscription and auto-renewal services, consumers have difficulty tracking all the negative option services and products in which they may be enrolled—so much so that there are now companies claiming to help consumers keep track of these services for a fee. As one commenter noted, consumers should not have to sign up for yet another service to manage all their subscriptions.⁴⁸⁵ Thus, limiting the reminder provision to just non-physical goods, and only annually, may not adequately mitigate the harm caused by negative option practices in the marketplace.

Additionally, the Commission shares some commenters’ concerns that consumers may ignore these reminder calls. Further, as some commenters noted, the proposed provision does not specify the timing for these reminders (*e.g.*, should sellers issue reminders annually from the date of initial purchase and a specific number of days before the charge?). Accordingly, the Commission will consider issuing a SNPRM seeking additional comment on these issues at a later date.

8. Proposed § 425.8 Relation to State Laws

In its NPRM, the Commission proposed that amendments to the Rule would not affect State laws, regulations, orders, or interpretations relating to negative options, except to the extent they are inconsistent with the final Rule, and then only to the extent of the inconsistency. A State provision would not be “inconsistent” with the proposed Rule if it affords any consumer greater protection than the Rule.⁴⁸⁶

The Commission received a range of comments in response. On one end, a commenter opined the “FTC cannot preempt existing [State] laws,” so it should instead strive for “harmonization and consistency with existing laws.”⁴⁸⁷ At the other end, multiple industry groups said the

⁴⁸⁵ State AGs, FTC–2023–0033–0886

(“Subscription management has become an entire industry; consumers can choose from a variety of companies that offer to monitor their recurring subscriptions. We believe that consumers should not have to sign up for yet another service—one that comes with privacy and security risks, as subscription monitoring services require sharing financial account and other sensitive information—in order to effectively manage their subscriptions.”).

⁴⁸⁶ *See* proposed § 425.8.

⁴⁸⁷ ANA, FTC–2023–0033–1001.

Commission should completely preempt State laws in this area.⁴⁸⁸ These commenters argued having both State and Federal standards may confuse consumers and create financial and operational burdens for sellers, thus raising consumer prices. For example, NCTA asserted that, without

preemption, the proposed Rule “would encourage the enactment of new [S]tate laws with differing standards.”⁴⁸⁹ Another industry commenter suggested the Commission should work with lawmakers on one national standard.⁴⁹⁰

Other industry groups and individual businesses supported preemption in various ways. For example, CTA argued the Rule should “preempt [S]tate laws with differing requirements.”⁴⁹¹ Two additional commenters, including a mixed group of industry associations, asserted the Rule should set the ceiling and preempt any State provision that is more stringent.⁴⁹²

NRF said the Rule should “preempt any [S]tate law requirements that contradict or are inconsistent with the Rule . . . to the extent of the inconsistency.”⁴⁹³ To effectuate this change, NRF suggested the Commission adopt language from California’s Automatic Renewal Law, which it said other States have copied. NRF proposed State laws be deemed inconsistent if they require disclosures or actions “that contradict . . . the [final rule],” and requirements be deemed contradictory if they use the same terms differently from the final rule or require “using a term different from the one required in the [final rule] to describe the same item.”⁴⁹⁴

Several industry groups expressed concern regarding potential confusion about preemption. For example, ACA Connects asserted it “may be unclear whether and to what extent [a particular State law offers] ‘greater’ or ‘lesser’ protection than [the proposed Rule]” and asked for more guidance generally or for a process that lets interested parties ask the Commission if a

⁴⁸⁸ NCTA, FTC–2023–0033–0858; PDMI, FTC–2023–0033–0864; CCIA, FTC–2023–0033–0984; ESA, FTC–2023–0033–0867; IAB, FTC–2023–0033–1000.

⁴⁸⁹ NCTA, FTC–2023–0033–0858; *see also* Chamber, FTC–2023–0033–0885 (“A floor just creates an increased [F]ederal burden without actually ensuring consistency of overall regulation on entities in the different [S]tates.”).

⁴⁹⁰ IHRSA, FTC–2023–0033–0863 (national standard).

⁴⁹¹ CTA, FTC–2023–0033–0997; *see also* Sirius XM, FTC–2023–0033–0857; DCN, FTC–2023–0033–0983.

⁴⁹² Coalition, FTC–2023–0033–0884; CCIA, FTC–2023–0033–0984.

⁴⁹³ NRF, FTC–2023–0033–1005.

⁴⁹⁴ *Id.*

particular State law is inconsistent.⁴⁹⁵ NRF noted such a system has worked well with gift card laws, explaining the CARD Act (Pub. L. 111–24, 124 Stat. 2385) preempts less restrictive State laws.⁴⁹⁶

Finally, a group of law professors supported the Commission’s proposed Rule. They noted “more than half of [S]tates . . . regulate some negative option marketing practices,” and said the Commission “does not occupy the field or displace non-conflicting [S]tate [laws].”⁴⁹⁷ The professors added States “can often move more nimbly to address problematic elements and evolving business models” and should retain the ability to do so.⁴⁹⁸

Having considered the foregoing comments, the Commission will streamline the text of the final Rule for clarity and efficiency, while maintaining the substance of the proposed Rule’s proposed preemption language (renumbered in the final Rule as § 425.7). The FTC Act does not expressly preempt State law, and the legislative history of the FTC Act indicates Congress did not intend the FTC to occupy the consumer protection regulation field.⁴⁹⁹ Therefore, any preemptive effect of the Rule must be limited to instances where it is not possible to comply with both State law and the Rule, or where application of State law would frustrate the purposes of the Rule.⁵⁰⁰ This approach preserves States’ ability to continue to act as laboratories to handle new and changing business models. This approach is consistent with other Commission Rules.⁵⁰¹

Therefore, § 425.7 of the final Rule specifies the Rule does not supersede, alter, or affect State statutes, regulations, orders, or interpretations relating to negative option marketing, except to the extent a State statute, regulation, order, or interpretation is inconsistent with the

Rule. The final language also continues to make clear State requirements are not inconsistent with the Rule to the extent they afford greater protection to any consumer. The manners in which a State law may provide greater protection are many. For example, a State law that requires sellers to remind consumers at the end of a free trial that they are about to be billed would provide greater protection to consumers and not be inconsistent with the Rule.

VIII. Modifications, Alternatives Considered

A. New Provisions in Final Rule for Clarification

1. New § 425.8 Exemptions

The NPRM sought comment on whether the Rule should exempt any entities or activities that are otherwise subject to the Commission’s authority under the FTC Act.⁵⁰² Several commenters requested Rule exemption for their business or industry.⁵⁰³ These commenters made various arguments based on the law and facts in their particular circumstances. For example, some argued existing State licensing and other requirements that already apply to their activities adequately address the problems identified in the NPRM and additional rules would only interfere with the existing regulatory structure. Because such decisions are highly fact dependent, the Commission must consider exemptions, even of larger groups, on an individualized basis pursuant to the FTC’s Rules of Practice.⁵⁰⁴ Pursuant to these rules, interested persons may file petitions for exemption with relevant evidence and data. If the Commission deems the petition sufficient to warrant further consideration, it will follow the procedures outlined in § 1.31 of its rules.

The Commission adopts a new section, § 425.8. Pursuant to this provision, and consistent with the Commission’s Rules of Practice, sellers

and other covered persons may seek full or partial exemptions if they can demonstrate application of the Rule’s requirements to a particular product or service, or class of product or service, is not necessary to prevent the acts or practices to which the Rule relates.

2. New § 425.9 Severability

One commenter, NFIB, asked the Commission to address severability in the Rule.⁵⁰⁵ Specifically, NFIB proposed a provision stating if a court finds any part of the Rule to be invalid, then the remainder of the Rule remains in force. The Commission agrees with this proposal. It is the Commission’s intent that the provisions of the final Rule are separate and severable from one another; therefore, if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect. Thus, the final Rule includes this language in a new section, § 425.9.⁵⁰⁶

B. Notice of Material Changes

In the NPRM, the Commission sought comment on whether and how sellers should notify consumers when they make material changes to contracts with a negative option.⁵⁰⁷ As discussed in the NPRM, several commenters responding to the ANPR recommended the Commission require sellers to send consumers notices of such changes. TINA, for example, asserted the Commission should require such notice and provide consumers an opportunity to cancel before the terms become effective.⁵⁰⁸ Several States require similar notices.⁵⁰⁹ The Commission, however, did not require notice of material changes in the proposed Rule. As it explained at the time, whether a seller’s failure to provide such notice is unfair or deceptive is a highly fact-specific inquiry that must be determined on a case-by-case basis. Given the importance of the issue, however, the Commission requested further comment.

1. Summary of Comments

Five commenters responded.⁵¹⁰ TINA reiterated sellers should provide

⁴⁹⁵ ACA, FTC–2023–0033–0881 (greater or lesser); NRF, FTC–2023–0033–1005 (more guidance); DCN, FTC–2023–0033–0983 (more guidance).

⁴⁹⁶ NRF, FTC–2023–0033–1005.

⁴⁹⁷ Law Professors, FTC–2023–0033–0861.

⁴⁹⁸ *Id.*

⁴⁹⁹ See, e.g., *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 989 (D.C. Cir. 1985).

⁵⁰⁰ Preemption would occur where there is an actual conflict between the two schemes of regulation such that both cannot stand in the same area. *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141 (1963); see also *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d 957 (D.C. Cir. 1985) (Credit Practices Rule); *Harry & Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir. 1984) (Funeral Rule); *Am. Optometric Ass’n v. FTC*, 626 F.2d 896 (D.C. Cir. 1980) (Ophthalmic Practices Rule).

⁵⁰¹ See, e.g., 16 CFR 437.9(b) (Business Opportunity Rule); *id.* 435.3(b) (Merchandise Rule); *id.* 436.10 (Franchise Rule); *id.* 429.2 (Cooling-Off Rule).

⁵⁰² See, e.g., NPRM, 88 FR 24730.

⁵⁰³ Categories of products and services for which commenters sought exemptions include: alarm companies (FTC–2023–0033–0860; FTC–2023–0033–1001); wireless carriers (FTC–2023–0033–0866); telecommunication providers (FTC–2023–0033–0876; FTC–2023–0033–0881); service contracts (FTC–2023–0033–0877; FTC–2023–0033–0879; FTC–2023–0033–0882; FTC–2023–0033–0996; FTC–2023–0033–1136; FTC–2023–0033–1143); insurance agreements, service contracts on consumer goods, and cancellable month-to-month agreements (FTC–2023–0033–0878); and retail energy service (FTC–2023–0033–1151). Some of these and others sought to exclude B2B agreements. See section VII.B.1.c.

⁵⁰⁴ See 16 CFR 1.25, 1.31; see also 86 FR 59851 (Oct. 29, 2021) (amending Commission procedures and rules on the petition exemption process).

⁵⁰⁵ NFIB, FTC–2023–0033–0789.

⁵⁰⁶ This provision is comparable to the severability provision in other Commission Rules. See 16 CFR 437.10 (Business Opportunity Rule); 16 CFR 455.7 (Used Motor Vehicle Rule); 16 CFR 436.11 (Franchising Rule); 16 CFR 453.8 (Funeral Industry Rule); 16 CFR 310.9 (TSR).

⁵⁰⁷ NPRM, 88 FR 24730.

⁵⁰⁸ NPRM, 88 FR 24724.

⁵⁰⁹ Those States include Virginia, California, and Oregon. NPRM, 88 FR 24724.

⁵¹⁰ ESA, FTC–2023–0033–0867; USTelecom, FTC–2023–0033–0876; ACA, FTC–2023–0033–0881; IAB, FTC–2023–0033–1000; and TINA, FTC–2023–0033–1139.

consumers with notice of material changes to subscription terms.⁵¹¹ Further, it asserted the Commission's reasoning is at odds with State laws and the Commission's longstanding position on material terms, *i.e.*, that they be "clearly and conspicuously disclosed when relevant to the marketing being presented."⁵¹² TINA further argued allowing businesses to "hide" material changes to these contracts is likely to cause injury because consumers "do not read these contracts (let alone monitor them for changes) and a significant minority of consumers are not even aware they are bound by these subscription contracts."⁵¹³

In contrast, ESA, USTelecom, ACA, and IAB supported the Commission's proposal. IAB and ESA said it is "industry practice for subscription-based services and products to have regular price increases over time," and consumers expect it.⁵¹⁴ USTelecom agreed with the Commission's rationale that "whether such a practice is unfair or deceptive depends heavily on the facts presented in each case."⁵¹⁵ ACA, a telecommunications trade association, noted the FCC and States already have notice requirements for contract term changes.⁵¹⁶

2. Analysis

Based on the record, the Commission does not require notice of material changes to contract conditions in the final Rule. The final Rule requires the seller disclose important information prior to charging the consumer. Such information includes all material terms, including, *e.g.*, the range of costs the consumer will be charged and the frequency of charges that will incur unless the consumer takes timely steps to prevent or stop them. The seller's failure to disclose such information upfront, clearly and conspicuously, violates the Rule.

Moreover, State laws have different predicate requirements (*e.g.*, less robust initial disclosures) and, importantly, are often based on different legal authority. Additionally, the Commission's final Rule does not conflict with its longstanding advice on clear upfront disclosure. The final Rule requires just such disclosure, § 425.4; and the Commission has never required after sale disclosure based on its section 5 authority.

Finally, as the Commission explained in the NPRM, whether a seller's failure to notify a consumer of material changes is unfair or deceptive could be heavily dependent on the particular facts and circumstances, such as the seller's upfront marketing claims. For example, based on a clear upfront agreement to allow periodic price increases, consumers may understand that firms can make small price increases over long periods of time. On the other hand, significant unilateral changes to the terms of the agreement, such as huge prices increases over short periods of time would probably be inconsistent with reasonable consumer expectation, and therefore, deceptive or unfair. Because the determination of whether a practice runs afoul of section 5 in this context is highly fact dependent, the Commission declines to address it at this time. Nevertheless, the Commission will continue to monitor the need for such a requirement and will continue to bring enforcement actions when appropriate.

C. Consumer Education

The Commission solicited comments on alternative approaches such as additional consumer and business education, and received two comments in response.⁵¹⁷ The Commission plans to continue its efforts to provide information to help consumers with their purchasing decisions and avoid ensnarement in unwanted recurring payment programs. However, consumer education is not a substitute for improving existing regulatory provisions. Consumer education is likely to have a limited benefit where sellers lure consumers into an agreement without consumers' knowledge, particularly with the use of dark patterns.

D. Implementation Date

Several industry groups and one individual commenter asked the Commission to delay the final Rule's effective date. Three commenters sought a delay of at least 12 months or up to 18 months, citing generalized concerns that changes can take time "given the complexities" of the proposed Rule.⁵¹⁸ The Chamber asked for a two-year period "depending on the scope and specific requirements of the final

rule."⁵¹⁹ By contrast, consumers generally encouraged the Commission to enact the Rule without delay.⁵²⁰

None of the commenters identified a precise period it would take to comply with a specific provision or otherwise detailed what would necessitate a particular length of time.⁵²¹ They did, however, detail the general actions they would need to take. For example, NCTA explained, "this proposal would require companies to change and update their customer processes and user interfaces to provide the mandated notices, obtain additional consent, and implement cancellation mechanisms," as well as troubleshoot those changes in a careful way to avoid "glitches and issues that would affect service and frustrate and harm consumers."⁵²²

The Commission recognizes changes to processes and disclosures typically require some time to address and has regularly provided a grace period for implementation of its rules.⁵²³ Small businesses in particular may require time to ensure their modified processes conform to the Rule. To address these concerns, the final Rule provides 180 days from the date the final Rule is published to come into full compliance. However, sellers must comply with § 425.3 60 days after publication of the Rule, consistent with 5 U.S.C. 801(a)(3). This section prohibits misrepresentations in connection with a negative option feature. Existing law already requires sellers not to make misrepresentations. Therefore, this provision should not impose an added time or cost burden on businesses operating lawfully.⁵²⁴

The Commission recognizes the remainder of the final Rule may require some businesses to implement or modify systems, software, or procedures. As detailed in the NPRM, however, the existing legal landscape already includes a patchwork of relevant Federal laws and regulations in

⁵¹⁹ Chamber, FTC-2023-0033-0885.

⁵²⁰ Individual commenter, FTC-2023-0033-0257; Individual commenter, FTC-2023-0033-0685.

⁵²¹ ACA, FTC-2023-0033-0881; SCIC, FTC-2023-0033-0879 (noting many States require service contract forms be filed with State regulators for approval); ANA, FTC-2023-0033-1001; NCTA, FTC-2023-0033-0858.

⁵²² NCTA, FTC-2023-0033-0858.

⁵²³ *E.g.*, 38 FR 33766 (Dec. 7, 1973) (original Negative Option Rule, 6-month grace period); 60 FR 43842 (Aug. 23, 1995) (TSR, 4-month grace period); 89 FR 26767 (Apr. 16, 2024) (TSR amendment, 180-day grace period); 79 FR 55615 (Sept. 17, 2014) (Merchandise Rule amendments, 3-month grace period).

⁵²⁴ Similarly, the various procedural sections of the Rule, *e.g.*, § 425.1 (Scope), § 425.2 (Definitions); § 425.7 (Relation to State Laws), § 425.8 (Exemptions), and § 425.9 (Severability) are also operative 60 days after publication.

⁵¹¹ TINA, FTC-2023-0033-1139.

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ IAB, FTC-2023-0033-1000; ESA, FTC-2023-0033-0867.

⁵¹⁵ USTelecom, FTC-2023-0033-0876.

⁵¹⁶ ACA, FTC-2023-0033-0881.

⁵¹⁷ See NPRM, 88 FR 24730; NFIB, FTC-2023-0033-0789 (requesting a business education enforcement provision); Hoofnagle, FTC-2023-0033-1137 (consumer and business education probably uneconomical intervention).

⁵¹⁸ IAB, FTC-2023-0033-1000 (at least 12 months); ESA, FTC-2023-0033-0867 (12–18 months); Kuehn, FTC-2023-0033-0871 (12–18 months).

addition to State laws to address sellers' negative option practices.⁵²⁵ The Commission has also issued guidance to businesses on the basic requirements that negative option marketers must follow to avoid deception.⁵²⁶ Compliance with these statutes and regulations should mean sellers have a significant head start on their compliance efforts.

Moreover, the Commission has streamlined the final Rule, significantly reducing the compliance burdens. Specifically, for reasons detailed in section VII, above, the final Rule omits or modifies proposed requirements that gave some commenters particular concern. Most notably, the Commission omitted the entire annual reminder and saves requirements. As commenters pointed out, these two sections imposed the greatest compliance burdens on sellers.⁵²⁷ Their removal, therefore, should substantially reduce the time and expense needed to ensure processes comply.

Similarly, other modifications should clarify and streamline requirements, making compliance easier. For example, the final Rule eliminates certain recordkeeping requirements.⁵²⁸ Additionally, the final Rule narrows the required disclosures.⁵²⁹ These changes combined with existing law obviate the need for a lengthy grace period.

E. Anti-Abuse Provision

The Law Professors suggested the Commission include an "anti-abuse" provision to provide a mechanism for enforcement against sellers' attempts to evade the Rule.⁵³⁰ Such a provision would make it an "unfair or deceptive act or practice" for a seller to, for example, set up a facially complicated sign-up process to allow for a similarly complicated cancellation process, but in practice to simplify the sign-up process to maximize enrollment.⁵³¹ As the Law Professors acknowledge, such attempts to evade the Rule already violate the Rule, and the record does not suggest a need for such an additional anti-abuse provision.

IX. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, we anticipate the Office of Information and Regulatory Affairs will designate the final Rule as a "major rule," as defined by 5 U.S.C. 804(2).

X. Final Regulatory Analysis

Under section 22(a) of the FTC Act, 15 U.S.C. 57b–3(a), the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule if the Commission: (1) estimates that the amendment will have an annual effect on the national economy of \$100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. Although the Commission preliminarily determined the proposed amendments to the Rule would not have such effects on the national economy; on the cost of goods and services offered for sale by mail, telephone, or over the internet; or on covered parties or consumers, several commenters raised concerns with the Commission's preliminary determination. Ultimately, the presiding officer determined, after receiving additional comments from interested stakeholders, the proposed amendments would have such effect.⁵³² In accordance with section 22, the Commission therefore issues its final regulatory analysis below.

A. Introduction

Under section 22 of the FTC Act, 15 U.S.C. 57b–3, the final regulatory analysis must contain (1) a concise statement of the need for, and objectives of, the final rule; (2) a description of any alternatives to the final rule which were considered by the Commission; (3) an analysis of the projected benefits, any adverse economic effects, and any other effects of the final rule; (4) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and (5) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission received comments from trade associations regarding the preliminary regulatory analysis in the NPRM, and three presented testimony and expert reports at the informal hearing. Comments and testimony, including reports submitted by experts, were largely conclusory in nature.⁵³³ The general theme of the comments and testimony, however, was that the compliance costs would be higher than those estimated in the NPRM's preliminary analysis, and the Commission herewith presents revised estimates of those compliance costs.

B. Regulatory Analysis

1. Concise statement of the need for, and the objectives of, the final Rule.

As discussed previously, the objective of the proposed amendments is to curb deceptive or unfair negative option practices. The legal basis for the proposed amendments is section 18(a)(1)(B) of the FTC Act, which provides the Commission with authority to issue "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce."⁵³⁴

As described in this SBP, the amendments address unfair or deceptive negative option practices. The FTC, other Federal agencies, and State attorneys general have brought multiple administrative and judicial actions to stop and remedy harmful negative option practices. The record demonstrates, however, that existing legal authorities fall short because they leave consumers unprotected from certain practices and constrain the relief the Commission may obtain for law violations to redress consumers and deter future unlawful activity. In the ANPR and NPRM, the Commission explained it receives thousands of consumer complaints a year related to negative option marketing.

As discussed above in sections III–VII, the final Rule clarifies existing requirements regarding negative option marketing currently dispersed in other rules and statutes administered by the FTC and provides a consistent legal framework across media and offers. It also consolidates all requirements, such as those in the TSR and ROSCA, specifically applicable to negative

⁵²⁵ NPRM, 88 FR 24716–18.

⁵²⁶ See EPS, 86 FR 60822; Staff Report, <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf> {last visited on Aug. 26, 2024}.

⁵²⁷ See sections VII.B.6 (saves) and VII.B.7 (reminders).

⁵²⁸ See § 425.5(a)(4).

⁵²⁹ See § 425.4.

⁵³⁰ Law Professors, FTC–2023–0033–0861.

⁵³¹ *Id.*

⁵³² Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042>.

⁵³³ Where specific components of the Rule, as anticipated when the NPRM was published, were discussed, commenters combined them, such that the concerns expressed cannot readily be separated to reflect what remains in the final Rule. For example, NCTA claims that "(t)he rigid 'Click-to-Cancel' requirements and limits on 'saves' will harm consumers," but addresses these harms only in combined and qualitative ways. FTC–2023–0073–0008.

⁵³⁴ 15 U.S.C. 57a(a)(1)(B).

option marketing. The final Rule also provides clarity about how to avoid deceptive negative option disclosures and procedures. For example, ROSCA lacks specificity about cancellation procedures and the placement, content, and timing of cancellation-related disclosures. The final Rule now provides clear standards for sellers about, *inter alia*, the content and timing of important information disclosures and what constitute “simple mechanisms” for the consumer to stop recurring charges. Further, the Rule allows the Commission to seek civil penalties and consumer redress under section 19(a)(1) of the FTC Act in contexts where such remedies are currently unavailable, such as deceptive or unfair practices involving negative options in print materials and face-to-face transactions (*i.e.*, in media not covered by ROSCA or the TSR).

2. *A description of any alternatives to the final Rule which the Commission considered.*

In formulating the final Rule, the Commission makes every effort to avoid imposing unduly burdensome requirements on sellers. To that end, the Commission avoids, where possible, proposing specific, prescriptive requirements that could stifle marketing innovation or otherwise limit seller options in using new technologies. In the NPRM, the Commission sought comments on several alternatives, including provisions related to consent requirements (additional consent for free trials) and reminder requirements (narrowing the scope of product types requiring reminders). The Commission also sought comments on how it could modify the proposed amendments to reduce costs or burdens for small entities. In response to the comments, and as discussed in the section-by-section analysis, the Commission determines not to finalize the proposed Rule in its entirety. Instead, the Commission finalizes a Rule that limits the material terms to be disclosed immediately adjacent to consent for the negative option feature; removes the limitation on saves and the accompanying recordkeeping requirement; removes the annual reminder provision; and modifies the length of the recordkeeping requirement for verification of consent to three years and provides an alternative method of compliance.

One alternative to the final Rule would be to terminate the rulemaking and rely instead on the existing legal framework to combat unfair or deceptive negative option practices. Another alternative would be to limit the scope of the final Rule to just those

negative option plans that are marketed in person or through the mail and therefore, currently, are covered only by section 5 of the FTC Act and not by ROSCA or the TSR. However, failing to proceed in accordance with the final Rule would substantially reduce or eliminate the benefits of the Rule, including clarifying the requirements currently spread throughout statutes and regulations and covering negative options in media not subject to the TSR or ROSCA.

Given that the Commission expects the unquantified benefits and unquantified costs of the final Rule to be small, and that there is considerable scope for the net benefits to remain positive and large even if compliance costs have been substantially underestimated, this regulatory analysis indicates that adoption of the Rule will result in benefits to the public that outweigh the costs.

3. *An analysis of the projected benefits and any adverse economic effects and any other effects of the final Rule.*

(a) Summary of Benefits and Costs

The primary consumer benefits of the final Rule, relative to the existing regulatory baseline,⁵³⁵ come in the form of faster cancellations when consumers wish to cancel subscriptions.⁵³⁶

⁵³⁵ As explained in section III of the SBP, several other statutes and regulations address harmful negative option practices. Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, has traditionally served as the Commission’s primary mechanism for addressing deceptive negative option claims. ROSCA, the TSR, the Unordered Merchandise Statute, and EFTA all address various aspects of negative option marketing.

⁵³⁶ The final Rule also requires that specific disclosures relating to negative option features be provided separately to consumers before consent is obtained, whereas the existing regulatory framework requires that all material terms of a negative option contract be disclosed in a clear and conspicuous manner. The new disclosure requirements will aid consumers in understanding both that they are entering a negative option contract and the terms and conditions of that contract, especially how they can cancel the contract and when such cancellation must occur to avoid future charges. No consumer testing of the final Rule’s disclosure requirements, relative to a “control” of “clear and conspicuous” disclosure requirements under the existing regulatory baseline, has been done. Accordingly, it is not possible to quantify any incremental consumer comprehension of a negative option plan at the time a consumer provides consent to that plan that may result from the final Rule’s disclosure requirements. Moreover, some academic studies claim that “[n]ot only do consumers have a tendency to forget, but also a tendency to forget that they forget,” suggesting that any gain in comprehension of the negative option features of an agreement that might be measured under consumer testing might not be durable. See Sophia Wang, “One Size Does Not Fit All: The Shortcomings of Current Negative Option Legislation,” 26 Cornell J. of L. & Pub. Policy, 197, 212 n.135 (2016) citing Keith M. Marzilli Ericson,

The final Rule requires negative option sellers to provide cancellation mechanisms that are at least as easy to use as the mechanisms by which consumers consent to negative option plans. For negative option sales made online or over the telephone, “at least as easy to use” requires that the cancellation mechanism operate in the same medium and take no more time or effort than the consumer used when enrolling in the negative option plan. For negative option sales that are made in-person or through the mail, the final Rule requires that, in addition to offering cancellation through the specific method used for enrollment, the seller must also offer at least one alternate cancellation mechanism that can be used remotely, *e.g.*, cancellation via a website, email, or a toll-free telephone number and, again, that the consumer can cancel the negative option contract at least as quickly as he or she completed enrollment in the negative option plan.

In the following analysis, the Commission describes the anticipated effects of the final Rule. Where possible, it quantifies the benefits and costs. If a benefit or cost is quantified, it indicates the sources of the data relied upon. If an assumption is needed, the text makes clear which quantities are being assumed. The Commission measures the benefits and costs of the Rule against the existing regulatory baseline that consists primarily of ROSCA, the TSR, and section 5 enforcement.⁵³⁷

“Forgetting We Forget: Overconfidence and Memory,” 9 J. Eur. Econ. Assoc. 43 (2011). Additionally, if the disclosures required by the final Rule come to be viewed as “boilerplate” language that consumers rush through, or consumers consider those disclosures to be less salient than other aspects of the transaction, such as acquiring a free trial of a product or service, the final Rule’s disclosures may not offer any incremental benefit over existing “clear and conspicuous” because “people have limited attentional resources and will overlook non-salient features of any transaction.” See Tess Wilkinson-Ryan, “A Psychological Account of Consent to Fine Print,” 99 Iowa L. Rev. 1745 (2014). Concerns such as these are consistent with some consumer advocacy groups seeking amendments that would require a second round of consent to be obtained at the end of a free trial and before any recurring charges could be initiated in addition to routine reminders of recurring charges. See, *e.g.*, TINA, FTC–2019–0082–0014 (seeking amendments to require notice and re-affirmance of consumer consent, prior to being charged because consumers may forget about the trial and incur unwanted charges or enrollments at the end of the offer, particularly with long trial periods).

⁵³⁷ The Unordered Merchandise Statute and EFTA also address various aspects of negative option marketing, but violations of those laws in relation to negative option marketing are typically pleaded in conjunction with violations of other laws; without loss of generality, the regulatory analysis expressly considers only ROSCA, the TSR, and section 5 as the regulatory baseline against which incremental benefits and costs from the final Rule are measured.

First, the likely per-cancellation benefits of the final Rule in relation to four scenarios under the existing regulatory baseline are considered. Next, the number of transactions relevant to each scenario are estimated. The product of average benefits-per-cancellation in each scenario multiplied by the likely number of consumer cancellation transactions for each scenario, summed across all scenarios, provides an estimate of the aggregate, quantifiable, consumer benefits produced by marketers' compliance

with the final Rule's cancellation requirements. Quantifiable costs primarily reflect the resources spent by businesses to review the Rule and to take any preemptive or remedial steps to comply with its provisions, including, when and as needed, making changes to the manner they receive and process cancellation requests from consumers.

The Commission estimates the present discounted value of quantified benefits over ten years, using a 2 percent discount rate, will range between \$6.1 and \$49.3 billion. Annualized over 10

years, the Commission estimates the quantified benefits will range between \$682.8 million and \$5.5 billion per year. The Commission estimates the present discounted value of quantified costs over ten years, using a 2 percent discount rate, will range between \$100.9 and \$826.2 million. Annualized over ten years, the Commission estimates the quantified costs will range between \$11.2 and \$92.0 million per year. These estimates are presented in Table 1 below.

TABLE 1—SUMMARY OF TOTAL QUANTIFIED BENEFITS AND COSTS

(In millions, 2023 dollars)

	Low	High
Present Discounted Value over 10 years, 2% discount rate		
Benefits	\$6,133.57	\$49,315.39
Costs	100.89	826.15
<i>Net Benefits</i>	<i>5,307.43</i>	<i>49,214.50</i>
Annualized over 10 years, 2% discount rate		
Benefits	682.83	5,490.11
Costs	11.23	91.97
<i>Net Benefits</i>	<i>590.86</i>	<i>5,478.88</i>

(b) Benefits of the Final Rule

This section describes the beneficial impacts of the Rule, provides quantitative estimates where possible, and describes benefits that are only assessed qualitatively.

The quantifiable estimates reflect benefits stemming from the decreased amount of time and effort consumers will need to expend cancelling subscriptions, and in contexts where data are available, welfare gains from avoided expenditure for unwanted subscriptions, under the final Rule relative to marketers' compliance with the existing regulatory baseline. This section first estimates per-consumer savings from cancellation mechanisms that would become at least as easy to use as the mechanisms through which consent to the negative option transactions was given and then estimates the number of cancellation transactions to which those benefits apply.

In addition to these quantified benefits, there are several benefits we do not quantify. First, marketers' compliance with the final Rule is likely to improve consumer confidence in using subscriptions⁵³⁸ and increase the

number of consumers who are willing to subscribe and obtain the convenience, and often cost savings, that subscriptions can provide. Second, research in economics and psychology finds the perceived monetary and psychological costs from switching products or services can lead consumers to make sub-optimal decisions. The final Rule, by reducing these costs through simpler cancellation methods, may improve consumer decision-making by reducing enrollments in subscriptions that consumers do not value and increasing enrollments in subscriptions that they do value.⁵³⁹

consumers who had subscriptions. See Jabil, "Connected Packaging Perceptions and Attitudes: A Consumer Insights Survey" (July 2021), <https://www.jabil.com/dam/jcr:ecdb74e6-c34f-4c30-aa34-c10269617db6/2021-connected-packaging-survey.pdf#page=3>. Another recent study finds that consumers are aware that they may be inattentive in future and not cancel subscriptions that they no longer desire, and so are less likely to sign up for negative-option subscriptions. See Klaus Miller, *et al.*, "Sophisticated Consumers with Inertia: Long-Term Implications from a Large-Scale Field Experiment" (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4065098.

⁵³⁹ A large literature in economics has documented that consumers face switching costs and/or psychological biases towards inertia. See, e.g., Brigitte Madrian & Dennis Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," 116 Quarterly J. of Econ. 1149 (2001); William Samuelson and Richard Zeckhauser, "Status Quo Bias in Decision Making,"

Marketers' compliance with the final Rule, and the consumer confidence that compliance inspires, may also "exert additional competitive pressures on businesses who offer subscription contracts (and) could increase productivity in the sector."⁵⁴⁰

Compliance with the final Rule may also result in some allocative effects when consumers can cancel online instead of by telephone. In such cases, consumers will be able to cancel subscriptions at times of the day that may be more convenient to them than the hours that subscription sellers staff their telephone lines and from devices that they find more convenient to use than telephones.⁵⁴¹

¹ J. of Risk & Uncertainty 7 (1988). Research has found that many consumers do not cancel subscriptions due to such inertia effects. See, e.g., Miller, *et al.* (2023); Liran Einav, *et al.*, "Selling Subscriptions" (2023), https://harris.uchicago.edu/sites/default/files/mahoney_ppe_seminar_paper_9-26-23_0.pdf.

⁵⁴⁰ See U.K. Department for Business and Trade, "Impact Assessment—Digital Markets, Competition and Consumers Bill: Subscription Measures," at 3 (Apr. 20, 2023), <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/ImpactAssessmentAnnex2.pdf>.

⁵⁴¹ In some instances, an online cancellation completed at, say, 11:59 p.m., compared to a counterfactual in which a call center closed at, say, 8 p.m., could result in sparing a consumer from a recurring charge that would take effect the next day, and such instances would result in actual monetary

Continued

⁵³⁸ One survey found that consumers without subscriptions were much more pessimistic about the ability to cancel subscriptions than were

Finally, the Commission's estimates of quantified benefits are based on reductions in time and effort from cancelling subscriptions to non-business consumers. The Commission expects small businesses may also benefit in similar ways from less costly cancellations, but it does not quantify such benefits due to lack of data on business cancellation transactions.

The following subsections then estimate the quantified benefits from reductions in time and effort from cancelling subscriptions. First, in subsection (1), the Commission estimates the per-cancellation benefit relative to the regulatory baseline for (i) online cancellation when only ROSCA-compliant telephonic cancellation was available, (ii) simpler online cancellation when only ROSCA-compliant online cancellation was available, (iii) simpler telephone cancellation when only TSR-compliant cancellation was available, and (iv) online or telephone cancellation when only in-person or mail cancellation was available. The Commission then estimates the number of cancellation transactions in subsection (2), and finally calculates benefits as the per-cancellation benefit in each scenario multiplied by the number of affected transactions in subsection (3).

(1) Estimating Per-Cancellation Benefits

For each of the four scenarios below, the Commission estimates a range of benefits that a consumer will gain each time they cancel a negative option subscription. In these scenarios, the Commission assumes a final Rule-compliant online cancellation should take no more than 30 seconds to one minute, based on the Commission's experience that the average time for consumers to read required disclosures and provide consent to a negative option plan online is 30 seconds to one minute. For telephone cancellations under the final Rule, the Commission assumes that a rule-compliant cancellation should take no more than one to two minutes, based on the assumption it takes a telemarketer twice as long to read required disclosures to a consumer as it would take a consumer to read such disclosures to his or herself online.

(a) Estimated Per-Cancellation Benefit Relative to ROSCA-Compliant Telephonic Cancellation

For consumers enrolling in negative option plans online, the existing

savings to consumers, but we are unable to estimate the frequency of such occurrences or the monetary savings they would engender.

regulatory baseline, ROSCA, requires marketers to provide "simple" cancellation mechanisms. A facially ROSCA-compliant, "simple" telephonic cancellation may, nonetheless, require more time and effort from consumers than was expended when enrolling in the negative option plan. Online subscription sellers' compliance with the final Rule will save consumers that extra measure of time and effort.

To estimate the average time savings to consumers of a final Rule-compliant "click-to-cancel" mechanism compared to a ROSCA-compliant simple telephonic cancellation, this analysis first assumes that ROSCA-compliant simple telephonic cancellations take no more time than the "average handle time" for all customer service requests made to call centers, which an industry source indicates is six minutes and three seconds.⁵⁴² As discussed at the beginning of this subsection, the Commission assumes a final Rule-compliant cancellation should take no more than 30 seconds to one minute, saving consumers between five minutes and three seconds and five minutes and 33 seconds per cancellation relative to a simple telephonic cancellation.

The Commission then assumes consumers, on average, value their non-work time at 82% of the mean hourly wage of \$31.48, or \$25.81 (*i.e.*, .82 × \$31.48) per hour.⁵⁴³ Accordingly, the Commission estimates the faster online cancellations the final Rule will provide, relative to ROSCA-compliant telephonic cancellations, will be valued at between \$2.17 (*i.e.*, 5:03 minutes × \$25.81/hour) and \$2.39 (*i.e.*, 5:33 minutes × \$25.81/hour).

⁵⁴² See Michelle Hawley and Shane O'Neill, "21 Important Call Center Statistics to Know About," (Apr. 3, 2024), <https://www.cmswire.com/contact-center/16-important-call-center-statistics-to-know-about>. We use this proxy for the time a ROSCA-compliant telephonic cancellation takes only for the express purpose of estimating the incremental benefits to consumers of a final Rule-compliant cancellation replacing a ROSCA-compliant telephonic cancellation. "Average handle time" has not been used as a standard for ROSCA enforcement and is not intended to set a standard here.

⁵⁴³ The Commission uses a mean hourly wage rate of \$31.48; see Bureau of Labor Statistics, "May 2023 National Occupational and Wage Estimates, Unites States," https://www.bls.gov/oes/current/oes_nat.htm. A meta-analysis of studies on how consumers value time used in traveling (an area in which "a huge literature has arisen") has determined that consumers value time used in that matter at 82% of their wage rate. See Daniel S. Hamermesh, "What's to Know About Time Use?," 30 J. Econ. Surv. 1, 198–203 (2015). The Commission assumes for the purpose of the final Rule consumers value transaction costs savings in the same way that they value travel time.

(b) Estimated Per-Cancellation Benefit Relative to ROSCA-Compliant Online Cancellation

For online cancellations of online-entered subscriptions, the Commission lacks a source of average cancellation times presumed to be ROSCA-compliant that is as comprehensive as that used for the average handle times of call centers. The Commission relies, instead, on an experiment that involved signing up for 16 online subscriptions between August 2 to October 4, 2022, then canceling each one, and recording the time it took to cancel, as well as the variety of other obstacles faced in canceling.⁵⁴⁴ To estimate the average time for online cancellations, the Commission subtracts the time incurred in canceling the three subscriptions that required telephonic cancellation from the aggregate time reported to cancel all 16 subscriptions. This yields an average of two minutes and 4 seconds per online cancellation.⁵⁴⁵

Based on the Commission staff's experience, the average time needed to read the required disclosures and provide consent to a negative option feature is 30 seconds to one minute. An online cancellation that took no longer than the provision of online consent would therefore save the consumer between one minute and four seconds and one minute and 34 seconds. Valuing consumers' time at \$25.81 per

⁵⁴⁴ See Caroline Sindors, "How Companies Make It Difficult to Unsubscribe," <https://pudding.cool/2023/05/dark-patterns>. Among the obstacles noted for otherwise seemingly simple online cancellations were that some websites did not use straight forward terms, such as "unsubscribe" or "cancel," and instead put the cancellation path under titles such as "auto-renew" or "edit plan."

⁵⁴⁵ The researcher reported the aggregate time expended to cancel all 16 subscriptions was 57 minutes and 31 seconds. Of the three subscriptions that required telephonic cancellations, one call took 17 minutes and 36 seconds, one took seven minutes, and the time to cancel the third one was not reported (apart from explaining that it was necessary to call three times due to the seller's "technical difficulties"). The Commission replaces this missing value with the average handle time found by Hawley/O'Neill (2024) of six minutes and three seconds. The Commission therefore subtracted 30 minutes and 39 seconds from the aggregate cancellation time of 57 minutes and 31 seconds; measured in seconds, this becomes $3,451 - 1,839 = 1,612$. Dividing this result by 13 equals 124 seconds, or two minutes and 4 seconds. The Commission notes this average cancellation time, though relevant for this regulatory analysis, has not been used as a standard for ROSCA enforcement and is not intended to set a standard here. Moreover, while we have calculated this average, the study notes cancellation took under one minute for three large sellers of digital entertainment subscriptions. Last, the Commission notes one commenter opined, "(f)or the most part," companies offer convenient, no-hassle, cancellation options that probably take about five clicks on average, though the commenter did not indicate a time duration. See Individual commenter, FTC–2023–0033–0780.

hour, as assumed above, the final Rule would therefore save consumers who enroll online and cancel online time that they value at between \$0.46 (*i.e.*, 1:04 seconds $\times$ \$25.81/hour) and \$0.67 (*i.e.*, 1:34 minutes $\times$ \$25.81/hour).

(c) Average Per-Cancellation Benefit Relative to TSR-Compliant Cancellation

For consumers enrolling in negative option plans via telemarketing, the existing regulatory baseline is the TSR. The TSR does not specify a performance standard specific to negative option cancellations. Although egregious cancellation delays can be pleaded against telemarketers under § 310.3(a)(1)(vii) (requiring disclosure of all material terms and conditions of the negative option feature) or § 310.3(a)(2)(ix) (prohibiting misrepresentation directly or by implication of any material aspect of a negative option feature), the final Rule's requirement that the cancellation mechanism be at least as easy to use as the consent mechanism provides cancellation-specificity to negative options sold through telemarketing that is lacking under the existing regulatory baseline. Because telemarketers have substantial discretion in designing and implementing consent processes specific to their programs, telemarketers will have a clear benchmark for the speed with which they must complete a final Rule-compliant cancellation.

As described at the beginning of this subsection, the Commission assumes it takes telemarketers between one and two minutes to read the required disclosures to consumers and receive their consent for enrollment in a negative option plan. Using the same average handle time measure of six minutes and three seconds used a previous scenario to proxy for baseline time spent for a telephonic cancellation, the Commission assumes the final Rule will save consumers who consent to a negative option sale via telemarketing, and cancel in the same manner, between four minutes and three seconds and five minutes and three seconds. Evaluating that time saving in the same manner as above, compliance with the final Rule results in a per-cancellation time saving that is worth between \$1.74 (*i.e.*, 4:03 minutes $\times$ \$25.81/hour) and \$2.17 (*i.e.*, 5:03 minutes $\times$ \$25.81/hour).

(d) Estimated Per-Cancellation Benefit Related to In-Person Enrollments

Some sellers market negative option plans in ways that are not covered by ROSCA or the TSR. Those that involve in-person enrollment and only offer in-person or mail cancellation, in particular, may be highly burdensome to

consumers. The final Rule requires sellers who offer in-person enrollment to offer at least one alternate cancellation method that consumers may use remotely, *e.g.*, online⁵⁴⁶ or via telephone.

Providing consumers with an alternative to in-person cancellations will give consumers a faster route to cancel a subscription and may also spare some consumers from incurring additional recurring charges which might accrue during the pendency of a slow cancellation mechanism, enabling consumers to reallocate their spending power in directions of greater utility, resulting in allocative efficiencies.

Unlike negative option transactions entered into online (ROSCA) or by telephone (TSR), the Commission lacks comprehensive experience with negative option plans that require cancellation in person or through the mail. However, because many gym/fitness center/health studio memberships (hereafter, "gym memberships") are sold via negative options⁵⁴⁷ and may require cancellation via certified mail or in person (sometimes even when consumers can enroll online⁵⁴⁸), the Commission proxies the per-cancellation benefits of an additional, remote, method of cancellation by looking at those benefits in the context of gym memberships.⁵⁴⁹

⁵⁴⁶ At the seller's choice, an online cancellation method may be through a website or via email.

⁵⁴⁷ IHRSA, The Global Health & Fitness Association, commenting on behalf of itself and the industry (*see* FTC–2023–0033–0863) claimed there were clear distinctions between in-person, brick-and-mortar health and fitness businesses and online subscription services, explaining a month-to-month contract is a very different risk to consumers than a long-term contract that begins after a free trial or auto-renews without notice. IHRSA further claims short-term (*e.g.*, month-to-month) continuous service agreements should be distinguished from purely online subscription services targeted by the rule. IHRSA further (mis-) characterizes the Rule as appearing to be concerned with paid contracts that initiate automatically after a free trial period or auto-renew without notice after a long, pre-paid initial term. IHRSA notes consumers with membership agreements with firms in its industry are on notice of the recurring cost because of the monthly charge and have the option to cancel each month under the terms of their contract. The Commission disagrees with IHRSA's characterization of the Rule; the Rule is not intended to exclusively, or even primarily, address online subscription services or long-term contracts that begin after a free trial or auto-renew without notice, but to address all recurring charge plans where the consumer's silence or failure to cancel is interpreted as consent to recurring charges. Accordingly, consumer memberships with firms in IHRSA's industry where consumers have the option to cancel each month squarely fit within the Rule's coverage of negative option plans.

⁵⁴⁸ Individual commenter, FTC–2023–0033–0233.

⁵⁴⁹ The International Carwash Association ("ICA"), however, commented many of its 60,000 U.S. members offer carwash subscriptions that offer a reduced price for carwashes to subscribers and

As noted in the comment submitted by comment filed by IHRSA,⁵⁵⁰ The Global Health & Fitness Association, "many (fitness club) operations allow several options for agreement termination through simple online solutions including online account management, email cancellation requests, and specific online cancellation buttons or forms" and "[m]any of these options are currently available for members who have purchased their membership either online or in person." IHRSA did not quantify the share of their member organizations that provide such cancellation opportunities or the number or share of consumer cancellation transactions in which online cancellation is available. Accordingly, the Commission assumes the low-end of the range of quantifiable benefits to consumers who purchased negative option plans in person, but could currently cancel online is the same as the same the low-end of the range for consumers who purchased negative option plans online and had access to online cancellations: \$0.46 per cancellation.

Notwithstanding IHRSA's assertion that many fitness clubs offer online cancellation, at least 25 individual consumers submitted comments attesting to the difficulties of canceling gym memberships. Some wrote in general terms of the difficulties consumers experience in canceling such memberships as something that contributed to their support for the Rule.

strengthen the relationship with customers and reduce dependence on cash transactions for these businesses. *See* FTC–2023–0033–1142. These subscriptions may be purchased in person, on the world wide web, via a mobile app, or at an automated teller, which indicates at least some of those subscriptions are covered by ROSCA. ICA asserts cancellation through a means other than in person may be burdensome to the generally small businesses that operate carwashes. *Id.* Although commenter Rocket Money, FTC–2023–0033–0998, mentioned "car wash chains that require consumers to visit a specific location to cancel their membership as an example of draconian cancellation requirements they experienced working with consumers, no individual consumer commenter mentioned difficulties with carwash subscriptions. Because no consumer commenter provided any other indication of the number of carwash subscriptions purchased or the costs of cancelling such subscriptions, even anecdotally, they are excluded from the analysis. The estimate of the consumer benefits that would flow from the final Rule's provision that an extra, remote, cancellation mechanism be required of marketers who currently offer only in person or mail cancellation mechanisms may therefore be an under-estimate of such benefits.

⁵⁵⁰ FTC–2023–0033–0863.

• “What seems more troublesome tend to be stuff like gym memberships.”⁵⁵¹

• “I work dispute resolutions for a bank. I see so many cases where someone is trying to cancel something like a gym membership and, while they can sign up in person, they for some reason have to mail a certified letter to the companies (sic) home office.”⁵⁵²

• “I have experienced so much frustration ending memberships with gyms, online subscriptions, etc. over many years and welcome help in this matter. So many friends I speak to share similar stories of how they were roped into paying for longer memberships and subscriptions that they no longer wanted.”⁵⁵³

• “Many places, like [specific fitness center chain], require you to go in person to cancel—they won’t even let you do it over the phone! This harms anyone that may have trouble leaving the house regularly, including disabled folks and parents of small children and those caring for older or ailing family members, not to mention being horribly inconvenient for everyone else.”⁵⁵⁴

Many others conveyed personal experiences with burdensome gym membership cancellation. The Commission relies upon these comments to estimate the high-end of the range of quantifiable benefits that the final Rule will provide to consumers who purchase negative option plans in person. Examples of these include:

• “I had to write a letter and physically mail it to cancel a gym membership I signed [sic] up for on an iPad.”⁵⁵⁵

• “Recently it took me three days and several hours to cancel a gym membership (that) had taken less than 20 minutes to join, on line [sic].”⁵⁵⁶

• “I had to go in person 3 different times because the manager wasn’t there so [sic] to cancel it.” This consumer attached a screen shot of the gym’s cancellation policy, which read, in part, “There is no contract and you are free to cancel your Direct Debit at any time. If you do decide to cancel your membership, you must allow at least 7 days before the fifth of the month to ensure your payment is cancelled and advise Reception of the cancellation.” Both “(a) *least* 7 days before the fifth of the month,” and the failure to specify whether “7 days” is seven business days or seven calendar days introduce

considerable uncertainty as to when, precisely, the consumer must tender a cancellation to avoid the next recurring payment.⁵⁵⁷

• “Years ago, I had signed up for a gym membership, and after a change in job situation, was no longer able to make use of it. Repeated attempts to reach the gym membership department and cancel my membership went unheeded—a [sic] got a classic runaround, and as often forwarded to unattended phone numbers—and I kept racking up monthly bills for a membership I didn’t want It was only through a personal relationship with someone who worked in the corporate office that I was finally able to get past their automatic renewals and effect a cancellation.”⁵⁵⁸

• “We wanted to cancel the [gym] membership, but when we called and emailed, we were told we couldn’t cancel that way. We had to send a certified letter or go in person. We have gone in person twice to try to cancel or [sic] membership and it has been a nightmare.”⁵⁵⁹

• “Personally, I have been impacted by my local gym’s undisclosed policies and shady cancellation policies that have costed me hundreds of dollars.”⁵⁶⁰

• “They bill you monthly for your gym membership but when you want to cancel your membership that’s when the problems arise. You cannot do it over phone or on their website. You have to go into the gym personally to cancel said membership. Not only that I was told that I’d have to go to the gym [home gym] where I signed up in order to cancel membership. I could only imagine what this would be like had I moved out of the state. Please help us stop these practices.”⁵⁶¹

• “I am currently trying to cancel a gym membership and have been overwhelmed by how difficult it has been I just called my gym . . . and the pre-recorded automated answering message literally says there is no direct line to the gym! That’s outrageous!!!”⁵⁶²

• “My personal experience is with my gym membership Getting out of it was terrible, and I’d hate to see it happen to anyone else.”⁵⁶³

Based on these comments, the Commission makes the simplifying assumption that the worst gym membership cancellation experiences

involve three failed attempts at cancellation, each costing one hour of time, and that, because of those cancellation failures, three unwanted monthly charges were processed. The Commission assumes a fourth cancellation attempt, also costing one hour of time, succeeds in halting the recurring payments.

As above, the Commission values consumers’ time at \$25.81/hour. The typical gym membership costs between \$40 and \$70 a month.⁵⁶⁴ The Commission therefore assumes, at the high-end, consumers incur gym membership cancellation costs of \$313.25 (*i.e.*, $(4 \times \$25.81) + (3 \times \$70)$) in the absence of this Rule.⁵⁶⁵ As stated previously, the Commission assumes a final Rule-compliant cancellation should take no more one minute at the high end, which has a value of consumers’ non-market time of \$0.43. Then, to estimate the high-end avoided burden that such consumers would experience under the final Rule, the Commission takes the difference between the high-end cancellation costs in the absence of this Rule (\$313.25) and the high-end final Rule-compliant cancellation costs (\$0.43), which equates to \$312.82. Accordingly, the low-to-high range of benefits provided by the final Rule to consumers who purchase negative option plans in person or through the mail ranges from \$0.46 to \$312.78.⁵⁶⁶

(e) Summary of Per-Cancellation Benefits

Table 2 presents a summary of the per-cancellation benefit the Commission estimates would result from this final Rule. For subscriptions that are currently cancelled over the phone but would be cancelled online under this final Rule, the Commission estimates

⁵⁶⁴ See Dana George, “This Is How Much the Average American Really Spends on Gym Memberships,” Jan. 7, 2024, <https://www.fool.com/the-ascent/personal-finance/articles/this-is-how-much-the-average-american-really-spends-on-gym-memberships>. Because this report is from January 2024, the Commission assumes it measured gym membership costs in 2023 dollars.

⁵⁶⁵ Note the avoided recurring payments associated with delayed cancellations may overstate the amount of consumer surplus gained attributable to the final Rule if consumers continue to use their gym membership during that period of delayed cancellation. However, it is difficult to estimate the extent to which that occurs due to lack of data. A part of those gains may also be transfers of producer surplus from firms to consumers.

⁵⁶⁶ Other cancellation methods gyms may currently offer, such as in-person visits that succeed in cancellation and cancellation via certified mail, would fall in between these low/high endpoints, as would the benefits to consumers if those methods were augmented under the final Rule not with online cancellations but with telephonic cancellations.

⁵⁵¹ Individual commenter, FTC–2023–0033–0780.

⁵⁵² Individual commenter, FTC–2023–0033–0007.

⁵⁵³ Individual commenter, FTC–2023–0033–1046.

⁵⁵⁴ Individual commenter, FTC–2023–0033–0741.

⁵⁵⁵ Individual commenter, FTC–2023–0033–0233.

⁵⁵⁶ Individual commenter, FTC–2023–0033–1076.

⁵⁵⁷ Individual commenter, FTC–2023–0033–0510.

⁵⁵⁸ Individual commenter, FTC–2023–0033–0968.

⁵⁵⁹ Individual commenter, FTC–2023–0033–0387.

⁵⁶⁰ Individual commenter, FTC–2023–0033–0572.

⁵⁶¹ Individual commenter, FTC–2023–0033–0299.

⁵⁶² Individual commenter, FTC–2023–0033–1163.

⁵⁶³ Individual commenter, FTC–2023–0033–0545.

consumers would experience a benefit of between \$2.17 and \$2.39 per cancellation. For subscriptions that are currently cancelled online and would move to a simpler online cancellation under this Rule, the Commission estimates consumers would experience

a benefit of between \$0.46 and \$0.67 per cancellation. For subscriptions that are currently cancelled over the phone and would move to a simpler telephone cancellation under this Rule, the Commission estimates consumers would experience a benefit of between

\$1.74 and \$2.17 per cancellation. For subscriptions enrolled in person that would be required to provide online or telephone cancellation under this Rule, the Commission estimates consumers would experience a benefit of between \$0.46 and \$312.82 per cancellation.

TABLE 2—ESTIMATES OF BENEFIT PER CANCELLATION

(In 2023 dollars)

	Low	High
Phone to Online Cancellation	\$2.17	\$2.39
Online to Simpler Online Cancellation	0.46	0.67
Phone to Simpler Phone Cancellation	1.74	2.17
In-Person to Online or Phone Cancellation	0.46	312.82

(2) Estimating the Number of Consumer Cancellation Transactions

(a) Baseline Number of Subscriptions

The Commission regards “consumers” for the purposes of this analysis as the U.S. population over the age of 18;⁵⁶⁷ this is estimated to be 269 million in 2025,⁵⁶⁸ the first year in the ten-year period over which the Commission estimates the benefits and costs of the final Rule (“Year 1”).

Because negative option sales are a form of marketing of goods and services, and not an industry or type of output, and because no occupational category is uniquely associated with negative option marketing, no publicly produced data source, such as the Economic Census, tracks the use of negative option marketing in the United States.

Accordingly, the Commission must look to other data sources, to estimate the number of subscription cancellations and the channels through which consumer consent was obtained and cancellation mechanisms provided.

To estimate the aggregate number of consumer cancellation transactions, the Commission relies upon a credible source that found that, as of mid-2023, 83% of American consumers had at least one subscription.⁵⁶⁹ The

Commission assumes, for the purposes of this analysis, that the percentage of American consumers with at least one subscription remains constant over ten years. Accordingly, in Year 1 the Commission assumes 223.27 million consumers (*i.e.*, $.83 \times 269$ million) have at least one subscription.

To estimate the total number of subscriptions held by U.S. consumers the Commission looks to data on the average number of subscriptions per subscriber. One source, relying upon a large sample of U.S. consumers conducted in late 2023 and early 2024, reported, “[t]he average subscriber now has 4.5 subscriptions.”⁵⁷⁰ The Commission therefore applies a multiplier of 4.5 to the number of consumers estimated to have at least one subscription to estimate the aggregate number of subscriptions held by consumers in each year. Continuing with the Year 1 example from above, the Commission assumes the 223.27 million U.S. consumers who have subscriptions collectively hold 1,004,715 subscriptions (*i.e.*, $223.27 \text{ million} \times 4.5$). The Commission acknowledges some uncertainty in these estimates which could lead to overestimation since subscriptions may be held by households of multiple individual consumers or underestimation due to potential growth in subscription-based goods and services.

(b) Baseline Number of Cancellations

The Commission next considers how many subscriptions consumers may want to cancel. To do so, we look to subscription “churn,” or cancellation,

rate data. Churn rates can reflect intentional cancellations as when a consumer completes a merchant’s cancellation process, but can also reflect involuntary or passive cancellations, which occur when the payment mechanism the consumer has on file with the merchant is unable to be processed by the merchant.⁵⁷¹ Churn rates may be calculated on a monthly, quarterly, or annual basis,⁵⁷² and some rates do not disclose a time dimension; mischaracterizing a monthly churn rate as an annual churn rate could vastly underestimate the volume of annual cancellations.

One source reports an aggregate measure of voluntary⁵⁷³ churn of 3% per month.⁵⁷⁴ The Commission assumes

⁵⁷¹ See Stripe, “Subscription churn 101: A complete guide for businesses” (Jan. 23, 2024), <https://stripe.com/resources/more/subscription-churn-101>.

⁵⁷² *Id.* (noting the choice often depends on your business cycle and how often you want to assess your performance).

⁵⁷³ Some consumers may welcome an “involuntary” cancellation of a subscription, and other cancellations that payment processors perceive as “involuntary” may reflect consumers’ deliberate cancellation of a credit card as a means of escaping a subscription that was difficult to cancel. The Commission’s analysis nonetheless uses only the reported “voluntary” churn rate to avoid the possibility of over-estimating the consumer benefits of the final Rule.

⁵⁷⁴ Recurly, a subscription management platform used across multiple industries, reports an overall churn rate of 4.1% per month and parses this rate into that arising from voluntary cancellations, 3%, and involuntary cancellations, 1%, with, presumably, 0.1% lost to rounding. Recurly explains its methodology in producing these estimates is based on a sample of over 1,200 subscription sites on the Recurly platform over 12 months (January to December 2023); its churn rates are monthly, calculated by dividing the number of subscribers who churn during the month by the total number of subscribers and uses median, 25th, and 75th percentile values to eliminate outliers and provide a more accurate representation of the data in its view. See Recurly, “What is a good churn rate?,” <https://recurly.com/research/churn-rate-benchmarks>. Other payment processors report similar churn rates but provide fewer details on the

⁵⁶⁷ Although this final Rule also benefits small businesses that purchase negative option plans, the Commission does not have sufficient data to quantify those effects in this analysis.

⁵⁶⁸ See U.S. Census, “Demographic Turning Points for the United States: Population Projections for 2020 to 2060: Population Estimates and Projections,” Feb. 2020, <https://www.census.gov/library/publications/2020/demo/p25-1144.html>. The Commission linearly extrapolated between the report’s figures for the population over the age of 18 in 2020 and its estimates of the same population in 2030 to estimate the number of consumers in years 2025 through 2029. Similarly, the Commission linearly extrapolated between the report’s estimates of the over age 18 population in 2030 and 2040 to estimate the over age 18 population in the years 2031 through 2034.

⁵⁶⁹ See Julia Stoll, “SVOD service user shares in the U.S. 2015–2023” (Sept. 7, 2023) (noting 83

percent of U.S. consumers used a subscription video-on-demand service in 2023), <https://www.statista.com/statistics/318778/subscription-based-video-streaming-services-usage-usa>.

⁵⁷⁰ Bango, “Subscription Wars: Super Bundling Awakens,” at 4 (2024) (based on data from 5,000 U.S. subscribers), <https://bango.com/resources/subscription-wars-super-bundling-awakens>.

Continued

this rate is constant from month to month and from year to year and therefore assume that the average annual churn rate across all subscriptions is 36%.⁵⁷⁵ This churn rate, multiplied by the number of subscriptions held by consumers each year, provides the yearly estimate of how many subscriptions are cancelled by consumers.⁵⁷⁶ Continuing with the Year 1 example from above, the Commission therefore estimates 361.70 million cancellations (*i.e.*, $36 \times 1,004.72$ million) will occur in Year 1 of the analysis and that this number will increase to 384.82 million by Year 10. Table 3 presents the number of subscriptions and total number of cancellations expected in each year.

TABLE 3—NUMBER OF SUBSCRIPTIONS AND TOTAL CANCELLATIONS PER YEAR
[In millions]

Year	Subscriptions	Cancellations
1	1,004.72	361.70
2	1,012.48	364.49
3	1,020.25	367.29
4	1,028.02	370.09
5	1,035.79	372.88
6	1,043.56	375.68
7	1,049.91	377.97
8	1,056.26	380.25
9	1,062.61	382.54
10	1,068.96	384.82

data underlying their churn rate estimates or do not distinguish voluntary from involuntary churn rates.

⁵⁷⁵ Because consumers may cancel a subscription and then enroll in a different subscription (or even re-enroll in a recently canceled subscription), the Commission assumes average, aggregate, monthly voluntary churn rates are additive across months and that the number of consumers with subscriptions do not “decay” at a rate of 3% per month. Indeed, another report found one-quarter of U.S. consumers cancelled a streaming video service in the past 12 months and resubscribed to the same service, with younger generations significantly more likely to return. See Deloitte, Digital Media Trends Survey: 16th Edition (2022), <https://www2.deloitte.com/us/en/insights/industry/technology/digital-media-trends-consumption-habits-survey/summary.html>. The Deloitte report also notes the average churn cancellation rate has remained consistent since 2020 at about 37% across all paid streaming video on demand services. Similarly, a comment from NCTA, FTC–2023–0073–0008, quotes Congressional testimony from Consumer Reports that 36% of consumers who subscribed to streaming services, switched and resubscribed multiple times over a period of 12 months.

⁵⁷⁶ The Commission is aware a recent survey of U.S. subscribers found 75% identified one subscription as one they will never cancel or even pause. See Bango (2024) at 8. The Commission assumes no adjustment is needed to the reported “churn” rate in light of this finding as subscriptions with such loyalty are already reflected in the denominator of the reported churn rate.

(c) Number of Cancellations by Enrollment and Baseline Cancellation Method

As discussed in the estimates of per-cancellation benefits, the estimated per-cancellation benefits stemming from the final Rule depend on the regulatory baseline cancellation methods relative to those that would be made available under the final Rule. To determine the number of cancellations for which the four categories of per-cancellation benefits estimates would apply, the Commission uses data on its enforcement experience to determine the share of cancellations likely to occur through online and telephone methods. For cancellations of subscriptions that are enrolled in person, the Commission uses data on gym membership cancellations as a proxy.

(i) In-Person Subscriptions

As a proxy for the number of subscriptions entered into in person, the Commission uses a report from Renew Bariatrics that claims 19 percent of the U.S. population are members of gyms or health clubs.⁵⁷⁷ The Commission assumes gym members are uniformly distributed by age and multiplies the U.S. adult population by 19 percent to estimate that 51.11 million adults will have active gym membership subscriptions when this final Rule goes into effect. An IHRSA article from 2019 stated the average health club has an annual attrition rate of 28.6 percent.⁵⁷⁸ Interpreting this to mean 28.6 percent of all adult gym members cancel their memberships each year, the Commission estimates 14.62 million gym membership subscriptions will be cancelled in the first year of this Rule. In Year 10, the Commission estimates 15.55 million gym membership subscriptions will be cancelled. The Commission uses these estimates as a proxy for the total number of subscriptions that are entered into in person and cancelled each year.

The Commission acknowledges several limitations with this proxy. To begin, there are likely many other types of businesses, such as car washes, lawn care, pest control, and personal care and grooming establishments, that may offer

⁵⁷⁷ See “28 Gym Membership Statistics: Average Cost of Memberships,” Renew Bariatrics (Jan. 4, 2024), <https://renewbariatrics.com/gym-membership-statistics/>.

⁵⁷⁸ See “Why Health Club Retention Requires a Technology Solution,” IHRSA (May 20, 2019), <https://www.healthandfitness.org/improve-your-club/why-health-club-retention-requires-a-technology-solution/#:-text=Acquiring%20a%20new%20customer%20is%20five%20times,rates%20by%205%20increases%20profits%20from%2025%20to%2095%20>.

in-person subscription enrollment. To the extent these subscriptions are not included in the count, the estimates may be understated. Further, the source that states 19 percent of the population are members of gyms does not specify the age distribution of the gym members. The Commission has assumed children and adults are distributed uniformly across that 19 percent; however, if adults are more likely to have gym memberships than children, the estimates of gym memberships and cancellations among adults will be understated. On the other hand, gym memberships are not always individual memberships; multiple family members may share a single-family membership. In estimating the number of gym memberships and cancellations, the Commission has assumed each adult gym member has their own subscription, which may overestimate the number of subscriptions and cancellations.

(ii) Online and Telephone Subscriptions

The Commission assumes all subscriptions that are not entered into in person are instead entered into either online or over the phone. Subtracting the in-person subscription, as proxied by gym membership cancellations, from the total number of cancellations, the Commission estimates 347.08 million subscriptions entered into either online or over the phone will be canceled in the first year of this Rule. This number would increase to 369.27 million cancellations in Year 10.

To estimate the distribution of cancellation methods for these subscriptions that are entered into online and over the phone, the Commission reviewed matters it has brought and resolved⁵⁷⁹ in which complaints specifically alleged negative option cancellation mechanisms that violated ROSCA, the TSR, or section 5.⁵⁸⁰ The Commission found 54 matters met these criteria.

Online⁵⁸¹ enrollment was possible in 42 of 54 matters that met the review

⁵⁷⁹ This tally does not include ongoing matters or matters that obtained “fencing-in” relief encompassing the sale of negative options without expressly pleading complaint counts related to cancellation mechanisms.

⁵⁸⁰ In many instances, ROSCA and TSR counts were cross-pled as section 5 counts; in parsing cancellation transactions by their enrollment methods, we use “section 5” to refer to instances in which neither ROSCA nor TSR violations were pled.

⁵⁸¹ For ease, the Commission includes in this tally two negative option plans that enrolled consumers via phone apps. Similarly, the Commission regards matters involving online marketing of negative options that were resolved before the passage of ROSCA (and some others that were resolved after the passage of ROSCA, but addressed online

criteria. In the remaining 12 matters, enrollment occurred over the phone. Among the 42 matters in which online enrollment was possible, only six firms offered online⁵⁸² cancellation,⁵⁸³ and the remaining 36 firms offered only telephonic cancellation.⁵⁸⁴ Among the 12 matters in which enrollment occurred over the telephone; none of the firms offered online cancellation, therefore, the Commission treats these 12 matters as if only telephone cancellation was available.⁵⁸⁵ To summarize, the Commission finds that, among subscriptions that are entered into online and over the phone, 66.7 percent (*i.e.*, 36/54) offered online enrollment and only telephone cancellation, 11.1 percent (*i.e.*, 6/54) offered online enrollment and online cancellation, and 22.2 percent (*i.e.*, 12/54) offered telephone enrollment and

telephone cancellation. Extrapolating the baseline cancellation methods from enforcement matters may weight the online enrollment/telephone cancellation subscriptions and the telephone enrollment/telephone cancellation subscriptions more heavily than is currently experienced in the market. It also assumes that there are no subscriptions offered in the baseline with cancellation methods that are already compliant with the provisions of this Rule. The Commission explores the impacts of these limitations in a sensitivity analysis in section (d).

Multiplying the distribution of cancellation methods for subscriptions entered into online and over the phone by the total number of cancellations of online and telephone subscriptions, the Commission estimates the annual number of cancellations that fall into each of these categories. In Year 1, the

Commission estimates that, in the absence of this final Rule, there would be 231.39 million cancellations by telephone of subscriptions entered into online, 38.56 million online cancellations of subscriptions entered into online, and 77.13 million telephone cancellations of subscriptions entered into over the phone.

(iii) Summary of Subscription Cancellations by Enrollment and Baseline Cancellation Method

Table 4 provides the number of subscription cancellations each year distributed across the four enrollment and regulatory baseline cancellation method categories: online enrollment and telephone cancellation; online enrollment and online cancellation; telephone enrollment and telephone cancellation; and in-person enrollment.

TABLE 4—CANCELLATIONS BY ENROLLMENT AND BASELINE CANCELLATION METHOD

[In millions]

Year	Online enrollment, telephone cancellation	Online enrollment, online cancellation	Telephone enrollment, telephone cancellation	In-person enrollment
1	231.39	38.56	77.13	14.62
2	233.18	38.86	77.73	14.73
3	234.96	39.16	78.32	14.84
4	236.75	39.46	78.92	14.96
5	238.54	39.76	79.51	15.07
6	240.33	40.06	80.11	15.18
7	241.79	40.30	80.60	15.27
8	243.26	40.54	81.09	15.37
9	244.72	40.79	81.57	15.46
10	246.18	41.03	82.06	15.55

(3) Total Quantified Benefits

To estimate total benefits from this final Rule, the Commission first matches the enrollment and baseline cancellation method categories from the previous section to the four scenarios used to estimate the per-cancellation benefit. The Commission assumes that, under this final Rule, subscriptions enrolled online and cancelled over the

phone in the baseline would move to online cancellations; subscriptions enrolled online and cancelled online would move to simpler online cancellation; subscriptions enrolled over the phone and cancelled over the phone would move to simpler telephone cancellation; and subscriptions enrolled in person would allow online or phone cancellation.

Next, the Commission multiplies the number of cancellations in each baseline category by the matched per-cancellation benefit on the low- and the high-end and then sums across all four categories to obtain total benefits each year. Those totals are presented in Table 5. In the first year following implementation of the final Rule, the Commission estimates the benefits will

marketers' conduct that occurred prior to the passage of ROSCA), as ROSCA matters for the purposes of assessing the incremental benefits of the final Rule relative a regulatory baseline of ROSCA's simple cancellation mechanism.

⁵⁸² In a few of these matters, online cancellation was offered in addition to telephonic cancellation, and to simplify the analysis, the Commission attributed half to the measure of telephonic cancellations and half to the measure of online cancellations. In a few other instances the Commission's designation of "online" cancellation includes cancellation by email or within the marketer's app.

⁵⁸³ In contrast, other evidence indicated that 81.25% of U.S. online marketers offered online cancellation. *See, e.g.*, Sindors (2023). Different research looked at nine U.S. news media publishers

that sold subscriptions online. When two "personas" created by the researchers subscribed to each of the nine publications, and then attempted to cancel, 17 of the 18 subscriptions could be canceled online; one publication permitted only the California resident persona to cancel online and offered only telephonic cancellation to the persona posing as a Texas resident. *See* Ashley Sheil, *et al.*, "Staying at the Roach Motel: Cross-Country Analysis of Manipulative Subscription and Cancellation Flows," in Mueller, F.F. (ed.), CHI '24: Proceedings of the CHI Conference on Human Factors in Computing Systems (May 11–16, 2024), <https://repository.ubn.ru.nl/handle/2066/30690>.

⁵⁸⁴ In some of the 36 matters, no cancellation method was disclosed by the seller, and in a few other matters consumers were required to return merchandise through the mail to prevent a free trial

from rolling over into a subscription or to obtain a refund for merchandise that was shipped to a consumer, and for which the consumer was charged. Such instances generally occurred before the passage of ROSCA, and it is highly unlikely that an online marketer who offered only a mailed-in cancellation could be in compliance with ROSCA's requirement that cancellation mechanisms be "simple." Without loss of generality, the Commission therefore treats instances in which online cancellation was not offered as instances in which only telephonic cancellation was offered to consumers.

⁵⁸⁵ Some required the return of merchandise through the mail if consumers wanted refunds. In two matters, no cancellation mechanism was revealed. Without loss of generality, we assume that cancellation could take place telephonically.

range between \$661.52 million and \$5.32 billion. In Year 10, the Commission estimates the benefits will range between \$703.82 million and \$5.66 billion. Using a 2 percent discount

rate, the Commission estimates the present discounted value of benefits over 10 years to range between \$6.13 and \$49.32 billion. Annualized over 10 years using a 2 percent discount rate,

the Commission estimates the benefits to range between \$682.83 million and \$5.49 billion per year.

TABLE 5—TOTAL QUANTIFIED BENEFITS
[In millions, 2023 dollars]

Year	Low	High
1	\$661.52	\$5,318.76
2	666.63	5,359.88
3	671.75	5,401.01
4	676.86	5,442.14
5	681.98	5,483.26
6	687.09	5,524.39
7	691.27	5,558.00
8	695.45	5,591.62
9	699.63	5,625.23
10	703.82	5,658.84
Present Discounted Value of Benefits over 10 years, 2% discount rate	6,133.57	49,315.39
Annualized Benefits over 10 years, 2% discount rate	682.83	5,490.11

(c) Estimated Costs of the Final Rule

This section describes the costs associated with firms coming into compliance with the final Rule, provides quantitative estimates where possible, and describes costs that are only assessed qualitatively. Whereas benefits were estimated based on cancellation transactions, compliance costs are estimated on the basis of firms covered by the final Rule. The Commission first examines the comment record on compliance costs and then estimates the compliance costs for the initial year and subsequent nine years following implementation of the final Rule.

(1) The Comment Record

The comment record has not provided specific data useful to the estimation of the costs of compliance with the disclosure, cancellation, and recordkeeping requirements of the final Rule.

Some industry commenters addressed compliance costs by providing broad, aggregate, conclusory cost estimates; because those costs were not itemized by specific features of the Rule as proposed in the NPRM, the Commission is unable to use those comments to estimate compliance costs relevant to the substantially narrowed scope of the final Rule in comparison to the Rule proposed in the NPRM.⁵⁸⁶ The same is

⁵⁸⁶ For example, NCTA, FTC–2023–0073–0008, indicated some major cable operators estimate it could cost \$12–\$25 million per company and take 2–3 years to rebuild their systems and one of its members thought annual costs could be 15–20% of the implementation costs (an industry rule of thumb). This comment does not itemize costs across different elements of the specific rules adopted.

Additionally, estimates of the annual costs of maintaining systems may be blanket costs that include a host of programming maintenance features that are unrelated to the specific disclosures and “click to cancel” features of the final Rule. Moreover, NCTA’s comment indicated customers of top cable operators enrolled over the phone (43%), online (30%), and in person (24%) and calls to customer service are answered within 30 seconds and lines are available 24 hours a day, 7 days a week. Accordingly, no extra compliance steps may be necessary with respect to offering final Rule-compliant cancellations for enrollments made by telephone, and compliance with the final Rule’s requirement that firms offer an extra cancellation mechanism for in-person enrollments likely could be met through reliance on these firms’ existing telephonic cancellation capabilities. Accordingly, the provision of an online cancellation mechanism will be required only for the 43% of their consumers who presently enroll online, and NCTA has not provided estimates of compliance costs that are specifically tailored to that segment of their consumer base. Because NCTA members who enroll consumers online already, clearly, have websites, the Commission rejects the notion that adding “click to cancel” functionality to websites that already include an order path for enrolling, and likely also include functionality for registering a payment mechanism for automated billing, would cost \$12–\$25 million, particularly in light of NCTA’s discussion of compliance with the 2019 Television Viewer Protection Act (“TVPA”) which, NCTA claims, already regulates *the very same practices* the FTC is attempting to regulate here. NCTA further claims major cable operators estimate that it cost approximately \$2.5 to 4 million per company and took about one year for TVPA compliance. However, having *already* incurred the costs to comply with “the very same practices” the final Rule addresses in the course of complying with the TVPA, there would appear to be no incremental costs to comply with the final Rule. Therefore, because the final Rule is narrower in scope than as proposed in the NPRM and because it offers firms the opportunity to apply to be excluded, the Commission rejects NCTA’s claim compliance with the Rule would be multiples of TVPA compliance costs and require building online cancellation systems virtually from the ground up and expensive ongoing recordkeeping requirements across all services. Accordingly, the Commission does not include in the estimates of compliance

generally true of testimony and expert reports submitted in conjunction with the informal hearing. Those materials did not focus on providing specific, relevant, data that would permit estimating compliance costs of the final Rule.⁵⁸⁷

costs the aggregate, non-specific, and possibly idiosyncratic compliance costs NCTA cites. Similarly, an expert’s survey submitted by IAB (attachment B to FTC–2024–0001–0010) found only six respondents (out of more than 100,000 companies subject to the proposed Rule) indicated the annual cost of compliance would be a total of \$50 million, but provided no itemization of these costs, such that they cannot be disaggregated to comport with the narrower scope of the final Rule.

⁵⁸⁷ For example, an expert report (Christopher Carrigan and Scott Walster, FTC–2024–0001–0026) filed by IAB concluded the effects of the proposed Rule, if finalized, on the U.S. economy would surpass \$100 million annually. The Commission agrees with this conclusion. The Commission disagrees, however, with both the initial and on-going compliance costs used by Carrigan-Walster; both were liberally based on replicating assumptions made in the preliminary regulatory analysis in the NPRM. Further, their assumptions are inappropriate to this cost analysis because they fail to account for the fact firms subject to the final Rule, unlike firms subject to the proposed Unfair or Deceptive Fees Rule, are already required to provide clear and conspicuous disclosures of all material facts relating to the sale of negative option contracts under the totality of ROSCA, the TSR, and section 5 of the FTC Act, and to provide simple cancellation mechanisms under ROSCA for those firms covered by ROSCA. In addition, firms subject to the final Rule are also required to comply with a variety of other laws relating to negative option sales, including the current Prenotification Rule, EFTA, the Unordered Merchandise Statute, numerous State laws, various laws and regulations that effect specific industries, such as the Television Viewer Protection Act of 2019 (TVPA), other FCC regulations, and, for multi-national entities, various foreign laws. Accordingly, the units of specialized labor, e.g., lawyer, web developer, and business analyst time, that Carrigan-Walster adopt from the Unfair or Deceptive Fees NPRM are not valid representations of the usage of such inputs that are *incremental* to compliance

Another commenter addressed the Paperwork Reduction Act cost estimate in the NPRM in a way that conflated it with the totality of compliance costs. IFA, which represents firms, including small firms, in the fitness, preventative healthcare, personal wellness or children's extracurricular activities industries, commented, "the FTC's estimate (in the NPRM) that it will cost companies merely three hours annually at \$22.15/hr to comply is grossly understated for IFA's members."⁵⁸⁸ The Commission agrees the final Rule's compliance costs will exceed the Paperwork Reduction Act costs discussed in the NPRM because the Paperwork Reduction Act costs only include burden associated with information collection requirements, such as recordkeeping and disclosure costs, while the total compliance costs include those costs as well as costs of familiarization with the Rule and costs to bring cancellation mechanisms into compliance. IFA did not, however, provide a sufficiently detailed alternative estimate of annual or ongoing general compliance or recordkeeping costs for its members.⁵⁸⁹ Similarly, IFA provided no information on the enrollment mechanisms used by its members nor an estimate of what share of its members offer negative option plans.⁵⁹⁰

with the final Rule relative to its existing regulatory baseline.

⁵⁸⁸ See IFA, FTC-2024-0001-0001.

⁵⁸⁹ IFA provided an extreme example relevant to what it identified as a preventative healthcare franchise system without disclosing how many individual firms belonged to that system. In the context of that system, IFA stated it would take thousands of hours to access if modifications are necessary to existing contracts, marketing, and operational processes and implement any requirements, costing hundreds of thousands of dollars. IFA did not, however, provide detailed, itemized, estimates of compliance costs that relate to the specific features of the final Rule, which has been substantially streamlined relative to what was proposed in the NPRM, making IFA's highly aggregated notion of compliance costs for one particular group system' inapplicable to the current cost analysis. The same lack of specificity is present in IFA's discussion of "Fitness franchise systems." With somewhat greater specificity, IFA estimates costs to comply with disclosure and recordkeeping requirements are 24 hours annually, but IFA did not disclose what type of labor inputs are involved in those tasks nor the number of fitness facilities that will incur these costs. Moreover, IFA reveals its members estimate the impact to member lifetime value will exceed \$100,000 per fitness center and lost revenue is expected to be nearly \$40,000 annually per fitness center, but these figures cannot properly be considered compliance costs as they may, in fact, represent benefits consumers receive from speedier exits from fitness club memberships that are no longer wanted by consumers.

⁵⁹⁰ Some of its members may offer yearly contracts that do not auto-renew, but that apportion payments over 12 months for the convenience of consumers. Such contracts are installment plans, and not negative option plans. Others may conduct business on a pay-as-you-go basis.

IFA did, however, comment that many of its members already offer consumers the ability to pause or "freeze" memberships, noting, "consumers take advantage of alternatives to membership cancellation at rates of 10% to 40%, with many consumers electing to reactivate their memberships, saving thousands of dollars annually in increased membership rates and additional initiation fees." While pause/freeze capabilities are indeed beneficial to consumers, they do not relieve a firm from an obligation to offer a cancellation mechanism. IFA did not provide similar data on what percentage of its member firms' consumers are dissatisfied with pause/freeze opportunities and seek authentic cancellations or what cancellation mechanisms its member firms make available to consumers.

The technological capability to pause or freeze subscriptions suggests the presence of software architecture "scaffolding" upon which a cancellation mechanism could be built at a modest incremental cost. Alternatively, the offering of subscription pauses or freezes by some IFA members may suggest those members use the services of third-party e-commerce hosting platforms or payment processors who routinely provide consumer subscription account management tools relied on by businesses, including small businesses. As discussed, below, existing software scaffolding and the utilization of third-party consumer subscription management tools can facilitate low- (and even no-) cost compliance with some of the final Rule's requirements.

(2) Initial Compliance Costs

The Commission has previously estimated that 106,000 firms offer negative option plans.⁵⁹¹ The

⁵⁹¹ As explained in the NPRM, this estimate is based primarily on data from the U.S. Census North American Industry Classification System (NAICS) for firms and establishments in industry categories wherein some sellers offer free trials, automatic renewal, prenotification plans, and continuity plans. Based on NAICS information as well as Commission staff's own research and industry knowledge, the Commission identified an estimated total of 530,000 firms involved in such industries. However, the Commission estimates only a fraction of the total firms in these industry categories offer negative option features to consumers. For example, few grocery stores and clothing retailers, which account for approximately a third of the of the total estimate from all industry categories, are likely to regularly offer negative option features. In addition, some entities included in the total may be exempt from the Commission's authority. Accordingly, the Commission estimates approximately 106,000 business entities (20%) offer negative option features to consumers. See 88 FR 24733. Although no commenter proposed a different number, ETA, FTC-2023-0033-1004, challenged the

Commission assumes that to come into compliance with the final Rule, all 106,000 firms selling negative option plans will need to expend some resources to familiarize themselves with the final Rule and some firms will incur costs related to improvements in their pre-consent disclosures and cancellation mechanisms.

Familiarization costs: No commenters presented estimates expressly related to the costs of legal and managerial review of the final Rule and front-line staff training needed to come into compliance. The U.K. "Impact Assessment," using surveys and interviews with managers of firms that sold goods and services via negative options, found that firms would need between four and 16 hours of "senior staff" time, depending upon the size of the firm, to gain familiarization with their proposed rule, and between zero and 80 hours of "service staff" time, again depending upon the size of the firm.⁵⁹² The Commission assumes that similarities between American and British firms are such that the same units of time are relevant for American firms to gain familiarity with the final Rule. In the American context, the Commission assumes "senior staff time" is proxied by "attorney time," and uses the mean hourly wage for attorneys, \$84.84 per hour, to estimate those costs.⁵⁹³ Similarly, the Commission assumes "service staff time" is proxied by the average of mean wages for salespersons and clerical workers, which is \$23.27.⁵⁹⁴ Accordingly, the

Commission's estimated number of firms selling negative option plans on the basis that it did not account for "the many providers of goods and services to business where automatic renewal clauses are used."

⁵⁹² See U.K. "Impact Assessment" (2023) at 26. While the U.K.'s rule may not be directly analogous to the final Rule, it addresses similar problems associated with consent and cancellation associated with negative option practices. Therefore, the burden the U.K.'s rule places upon subscription sellers, in terms of executive and staff resources to read and understand the rule and assess whether existing procedures are in compliance or need to be revised, may be highly similar to the familiarization steps that U.S. businesses will need to undertake.

⁵⁹³ The mean hourly wage for lawyers in 2023 was \$84.84; see Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 23-1011 Lawyers," <https://www.bls.gov/oes/current/oes231011.htm>.

⁵⁹⁴ The Commission uses a mean hourly wage for sales personnel of \$25.62; see Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 41-0000 Sales and Related Occupations (Major Group)," <https://www.bls.gov/oes/current/oes410000.htm>. The Commission uses a mean hourly wage for clerical workers of \$20.94, see Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 43-9061 Office Clerks, General," <https://www.bls.gov/oes/current/oes439061.htm>. The average of these two mean wage rates is \$23.27.

Commission estimates the aggregate initial year familiarization costs as ranging between \$35.97 million and \$341.22 million.

Disclosures: Clear and conspicuous disclosures are already required by the existing regulatory baseline; § 425.4(a)(1)–(4) of the final Rule adds specificity to those disclosures, albeit in a flexible way.⁵⁹⁵ As estimated below, the Commission assumes some marketers are already in compliance with the disclosure requirements of the final Rule; for these marketers, there are no incremental costs of compliance with the disclosure requirements of the final Rule.

For online marketers, the current regulatory baseline is ROSCA, which requires marketers to clearly and conspicuously disclose all material terms of the transaction before obtaining the consumer's billing information. To the extent ROSCA-covered marketers' current disclosures lack the specificity required by the final Rule, the Commission estimates changes will be needed only to textual elements of such marketers' websites and that no changes to the underlying website architecture will be needed. The Commission further assumes any such changes, if needed, will be made by website developers, whose mean hourly wage is \$45.95.⁵⁹⁶ Similarly, some telemarketers and in-person negative option marketers may need to modify their sales agents' scripts to incorporate the disclosures required by the final Rule. Without loss of generality, the Commission assumes the mean wage rates of marketers' staff who will make such script changes is proxied by the mean wage rates of web developers.⁵⁹⁷ Although in the Commission's experience these changes should take very little time, perhaps as little as one hour, the Commission adopts a range of one to 10 hours to complete this task.⁵⁹⁸

⁵⁹⁵ The final Rule requires disclosure of: the fact consumers will be charged; the amount(s) they will be charged; when the consumer must act (by deadline or frequency) to prevent or stop charges; and the information needed for the consumer to find the simple cancellation mechanism.

⁵⁹⁶ See Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 15–1254 Web Developers," <https://www.bls.gov/oes/2023/may/oes151254.htm>.

⁵⁹⁷ This is consistent with the approach taken in the expert report submitted by IAB. See Carrigan-Walster, FTC–2024–0001–0026 (noting many firms using negative option marketing present offers through the internet and, for firms presenting offers through other means, web developer time is used as a proxy for worker time to create the presentation of the offers).

⁵⁹⁸ The assumed range of one to 10 hours is consistent with the time estimate used for compliance checks and minor modifications of websites in the Unfair or Deceptive Fees NPRM. See 88 FR 77420 (Nov. 9, 2023).

Accordingly, the Commission estimates that for those marketers whose disclosures are not already in compliance with the requirements of the final Rule, disclosure compliance costs will range between \$45.95 and \$459.50.

Cancellation mechanisms: Section 425.6 of the final Rule requires negative option marketers to provide a simple cancellation mechanism that is in the same medium, and at least as simple for the consumer to use, as the mechanism by which the consumer provided consent to the negative option plan. Additional requirements are medium-specific. For example, when consent is provided through an interactive electronic medium, the cancellation mechanism (also provided through an interactive electronic medium) must be easy for the consumer to find when the consumer seeks cancellation information (for example, on a website, the cancellation mechanism cannot be hidden in "terms and conditions" or otherwise difficult to find) and cannot require interactions with live or virtual representatives (such as chatbots) if no such interactions were required when the consumer consented.

When consent is provided over the telephone, the final Rule requires that telephonic cancellation must be available during normal business hours and not be more costly for the consumer to use than the telephone call the consumer used to consent to the negative option feature.

When consumer consent to a negative option plan is provided via an in-person method, the marketer must offer cancellation opportunities, where practical, in a like manner. In addition, the marketer must offer an alternative simple cancellation mechanism through an interactive electronic medium or by providing a telephone number that satisfies all final Rule requirements related to use of those cancellation media.

The costs negative option sellers will incur in the initial year following implementation of the final Rule to bring their cancellation mechanisms into compliance with the final Rule will depend upon their pre-existing cancellation mechanisms. No commenter provided research or data on the frequency of use of different cancellation mechanisms across negative option marketers or on the incremental costs to make the existing cancellation mechanism compliant with the requirements of the final Rule.⁵⁹⁹

⁵⁹⁹ Trade association commenters who addressed cancellation mechanisms used by their members, and whether those mechanisms were or were not symmetric with enrollment mechanism or as easy

Because the comment record has not provided sufficient data to estimate the costs of compliance with the final Rule's cancellation requirements, the Commission turns to data from the U.K.'s "Impact Assessment" on regulating subscriptions there. Based on these sources, the Commission finds some sellers of negative option plans are already in compliance with the cancellation requirements of the final Rule, and many others will incur only minimal costs to make their cancellation flows compliant with the final Rule.

The relevant experimental research looked at the cancellation practices of 16 online subscription sellers, many of them large and well-known firms, and noted the cancellation mechanisms made available to consumers and how easy those mechanisms were for consumers to locate and use.⁶⁰⁰ Although the number of firms sampled in this research was small, publicly available data on total enrollments, located for just seven of the 16 firms, collectively numbered over 350 million,⁶⁰¹ which may lend significance

to use as enrollment mechanisms did so only in a very general manner. For example, NCTA (FTC–2024–0001–0011) commented that, in 2021 and 2022, customers of top cable operators enrolled over the phone (43%), online (30%), and in person (24%) but provided no information on available cancellation mechanisms. Additionally, NCTA stated its analysis shows complaints received about cancellation are very limited (approximately 0.017% of cancellations) out of the approximately 14 million customers who cancelled some or all of their services from NCTA's largest cable operator members in 2022. Anecdotes such as these, about "top" or "largest" companies do not provide sufficiently reliable data for the instant analysis. Similarly, IHRSA's comment about "many" fitness club operations allowing options to cancel by simple online solutions is not specific enough to be helpful (see FTC–2023–0033–0863).

⁶⁰⁰ See Sindors (2023).

⁶⁰¹ The Commission located subscriber estimates for seven (Amazon, Ancestry, Hulu, Netflix, Paramount+, The Boston Globe, and The New York Times) of the 16 firms included in the research. The number of U.S. subscribers to Amazon Prime is estimated to reach 171.8 million in 2024. See <https://www.yaguara.co/amazon-prime-statistics>. At year-end 2023, Ancestry.com had over 3 million subscribers. See <https://www.ancestry.com/corporate/newsroom/press-releases/ancestry-releases-2023-annual-impact-report--underscoring-corporate>. As of the second quarter of 2024, Hulu had 50.2 million paid U.S. subscribers. See <https://www.statista.com/statistics/258014/number-of-hulus-paying-subscribers>. Also as of the second quarter of 2024, Netflix had 84.11 million subscribers in the U.S. and Canada. See <https://www.statista.com/statistics/483112/netflix-subscribers>. Even if the Commission makes the extreme assumption that every Canadian held a Netflix subscription, that would still leave approximately 50 million U.S. subscribers. Paramount+ had over 71 million subscribers as of the first quarter of 2024. See <https://www.theverge.com/2024/4/29/24144766/paramount-plus-now-has-over-71-million-subscribers>. The Boston Globe had 260,000 (mostly digital) subscribers in 2023. See <https://pressgazette.co.uk/north-america/us-local-news->

to this research beyond what might otherwise be associated with a sample size of 16 firms. Moreover, the methodology of the study suggests that the researcher's experiences with enrollment and cancellation likely would be typical of any consumer undertaking the same enrollment and cancellation tasks with those firms.

The experimental research found that 18.75% (*i.e.*, $100 \times 3/16$) of the online marketers studied offered online cancellations in a straightforward, easy to use manner such that it took the researcher less than one minute to complete a subscription cancellation. The Commission therefore assumes that 18.75% of online sellers of negative option plans will not need to change their websites to come into compliance with the cancellation requirements of the final Rule. Although this research did not specifically measure the adequacy of pre-consent disclosures, the Commission assumes that companies who make cancellation so easy for consumers perform equally well in making disclosures. Accordingly, the Commission assumes that the 18.75% of online firms selling negative options that will not incur incremental costs to comply with the final Rule's cancellation requirements also will not incur any incremental costs to comply with the final Rule's disclosure requirements. The Commission assumes that the remaining 81.25% of online negative option sellers that lacked such easy-to-use cancellation mechanisms also performed less well in making the disclosures required by the final Rule, such that they would incur initial year compliance costs of improving their disclosures as indicated by the range estimated above.

The same research found that 62.5% (*i.e.*, $100 \times 10/16$) of sampled online negative option sellers had cancellation paths that took longer for consumers to complete as a result of nomenclature, not website architecture. These sites, rather than using straightforward terms such as "unsubscribe" or "cancel," put the cancellation path under titles such as "auto-renew" or "edit plan,"⁶⁰² and locating the cancellation mechanism delayed the researcher in completing the cancellation task because of the non-

intuitive labeling of the entry point into the cancellation mechanism. In such instances, more intuitive, consumer-friendly labeling of the existing cancellation architecture is assumed to be what is needed for these sites to come into compliance with the cancellation requirements of the final Rule. The Commission assumes such relabeling will not require any additional programming or changes to the underlying website architecture. In the Commission's experience, such "cosmetic" changes can be made quickly and inexpensively, possibly in as little as one hour of a website developer's time. The Commission notes, however, that the U.K. "Impact Assessment," in considering "general updates to websites such as reflecting the clearer communication on contract conditions and updating cancellation options," estimated that such changes would "require eight hours' work from an IT professional and that these costs are uncorrelated with the size of the business."⁶⁰³ The website changes contemplated in that assessment likely exceed those required to merely relabel consumer-facing elements of an existing cancellation architecture. Out of an abundance of caution, however, the Commission uses the U.K.'s estimate of eight hours as an upper bound on the time required to make the needed changes and further assumes that the relevant "IT professionals" are website developers, which, as noted previously, have a mean wage rate of \$45.95. Accordingly, the Commission assumes each firm that needs to relabel existing cancellation mechanisms to make those mechanisms easy for consumers to locate and use will spend between \$45.95 (*i.e.*, $1 \times \$45.95$) and \$367.60 (*i.e.*, $8 \times \$45.95$) to come into compliance with the final Rule's cancellation requirements.

Lastly, the aforementioned research found that 18.75% (*i.e.*, $100 \times 3/16$) of online negative option sellers offered only telephonic cancellation. Such firms, because they were online sellers, clearly had online ordering and payment website architecture in place, and so had "scaffolding" upon which online cancellation architecture could be built. No commenter provided relevant data on the costs of building-out a "click-to-cancel" mechanism in such instances, and the U.K. "Impact Assessment" indicated it "lacked high quality evidence on the costs businesses would incur" to integrate "easy exiting mechanisms into websites." As a result, the "Impact Assessment" turned to "external estimates" from "[t]he U.S.

eCommerce agency OuterBox [which] indicates a possible range of costs. It suggests that integrating simple tools into an existing eCommerce platform would cost most businesses approximately \$500" in 2022.⁶⁰⁴ In 2023 dollars, that amount is \$532.05.⁶⁰⁵ The Commission notes, however, that many payment processors and website hosting platforms used by many businesses, particularly small and medium-sized businesses, provide marketers with consumer subscription account management tools that provide consumers with "click-to-cancel" functionality at no direct⁶⁰⁶ incremental cost to marketers.⁶⁰⁷ As no commenter

⁶⁰⁴ U.K. "Impact Assessment" (2023) at 27 (citing a report from 2022).

⁶⁰⁵ See Bureau of Labor Statistics, "CPI Inflation Calculator," https://www.bls.gov/data/inflation_calculator.htm. We note that this amount is equal to 10.25 hours of computer programmer time valued at a mean hourly wage rate of \$51.90; see Bureau of Labor Statistics, "Occupational Employment and Wages, May 2023, 15–1251 Computer Programmers," <https://www.bls.gov/oes/current/oes151251.htm>. As such, this is consistent with the outcome of the approach used by Carrigan-Walster, FTC–2024–0001–0026, in proxying the first-year costs of compliance costs with each of the six provisions of the Rule proposed in the NPRM (which differed, substantially, from the narrowed final Rule, although not with respect to "click to cancel" provisions). That approach made the ad hoc assumption that technological changes required by the Rule would require the same labor inputs as similar requirements in the NPRM for the FTC's Rule on Unfair or Deceptive Fees, notwithstanding the two rules differ substantially in their regulatory baselines. See 88 FR 77420.

⁶⁰⁶ To the extent that a marketer uses the easy subscription account management and cancellation tools offered by hosting platforms or payment processors and the presence of such tools reduces consumers' perception of the risks of entering into a subscription agreement with the marketer, the marketer's sales may increase along with any payments to the platform or processor that are based on the number of transactions or aggregate sales.

⁶⁰⁷ See, for example, Shopify's help page at <https://help.shopify.com/en/manual/products/purchase-options/shopify-subscriptions/customer-experience#subscription-management-for-customers>, "Shopify Subscriptions displays subscription information to customers in the checkout. For example, when buying a subscription product, the order frequency and discount amount for the subscription is displayed in the order summary. . . . During checkout, your customer needs to agree to the cancellation policy terms to confirm that they understand they're purchasing a subscription. They can't complete their purchase without agreeing to this policy. . . . Customers can log in to their customer account to view and manage their subscription orders. Customers can resume, skip, and cancel their subscriptions, and manage their payment methods and shipping address." Moreover, Shopify offers a variety of consumer subscription management tools to merchants that use Shopify for payment processing ("checkout") or website hosting at no incremental cost to merchants. See <https://apps.shopify.com/categories/selling-products-purchase-options-subscriptions>. The fees Shopify charges merchants varies with a number of merchant-specific features, including website design elements, whether merchants want "Shopify checkout" to work on

subscribers-ranking. As of mid-year 2024, the New York Times had 10.8 million subscribers. See <https://www.nytimes.com/2024/08/07/business/media/new-york-times-earnings.html>. The Commission was unable to locate subscriber data for some of the other firms sampled (*e.g.*, Savage Fenty, Daily Harvest, Deliveroo) and in some other instances found subscriber data reported only on a global basis (*e.g.*, Google One, Adobe).

⁶⁰² In the researcher's view, this kind of naming is confusing and adds unnecessary friction to the cancellation process. See Sindors (2023).

⁶⁰³ U.K. "Impact Assessment" (2023) at 26.

provided information on (1) how many negative option sellers comply with ROSCA by offering only telephonic cancellation, (2) what specific costs they would face to provide an online cancellation mechanism, or (3) whether they would build such functionality themselves or use a third-party payment processor or hosting platform to provide it for them, we estimate such costs to range between \$0 and \$532.05 per firm.

Accordingly, the Commission assumes that most online marketers of negative option plans will face minimal IT costs of coming into compliance with the cancellation requirements of the final Rule.⁶⁰⁸

As noted previously, telemarketers have substantial control over both how long the consent process takes and how long it takes a consumer to complete a cancellation over the telephone. If compliance with the final Rule expedites the cancellation process over the phone, telemarketers may experience cost-savings associated with such resources. Furthermore, no telemarketers or call centers that provide services to telemarketers submitted comments relating to what costs telemarketers would incur to bring cancellation mechanisms into compliance with the final Rule. Because of this, and because the Commission has previously found that only 2,000⁶⁰⁹ of 106,000 firms selling negative options were telemarketers (and no commenter has disputed this finding), the Commission proceeds as if telemarketers face no incremental costs in complying with the final Rule's cancellation requirements. However, to reduce any potential downward bias⁶¹⁰ this might introduce into the

social media platforms in addition to the merchant's own website, how many of the merchant's employees will have the ability to log in to the merchant's Shopify account, etc. (see <https://aureatelabs.com/blog/shopify-website-development-cost>). So, although what merchants pay to use Shopify may vary across firms, the incremental cost of using Shopify for consumer subscription account management is assumed to be zero. See also Hoofnagle, FTC-2023-0033-1137 ("There are scores of companies like Chargebee that help companies manage subscriptions Compliance with new rules is inexpensive because policy changes can be made programmatically in dashboards" provided by entities such as Chargebee.').

⁶⁰⁸ No commenter to the ANPR or NPRM, and no comment, expert report, or testimony in relation to the informal hearing provided estimates of compliance costs firms would incur that were specific to the features of the Rule as then-proposed that remain in the final Rule.

⁶⁰⁹ See NPRM, 88 FR 24733.

⁶¹⁰ Because telemarketing firms are such a small share of all firms that will be covered by the final Rule, the Commission does not expect this treatment of telemarketers (or, indeed, even a total exclusion of telemarketers from the analysis) to impart a significant bias.

compliance cost estimate, the Commission does not subtract the estimated number of telemarketers (2,000) from the total estimated number of online negative option marketers in its calculations of costs. Similarly, the Commission lacks data on how many of the 106,000 firms selling negative option plans currently offer only in-person or by-mail cancellations.⁶¹¹ The final Rule requires such firms to add a cancellation mechanism that consumers can easily use in a remote manner, e.g., through interactive electronic media or by telephone.

Lastly, the Commission considers the initial year recordkeeping costs required by the Rule, which are estimated in section XIII to be \$6.54 million when aggregated across all 106,000 firms.

Because of the aforementioned data limitations emerging from the comment record, the Commission applies the findings of the experimental research above, which looked only at online sellers, to the full number of firms,

⁶¹¹ Three trade associations, who have some members who either sell or offer cancellation mechanisms in-person, submitted comments that were not sufficiently detailed to permit Commission staff to estimate the number of firms that both sell and cancel in-person or through the mail. For example, IHRSA (FTC-2023-0033-0863) commented many of its members allow several options for agreement termination through simple online solutions including online account management, email cancellation requests, and specific online cancellation buttons or forms, adding many of these options are currently available for members who have purchased their membership either online or in person. The International Carwash Association ("ICA"), FTC-2023-0033-1142, commented on subscription-related revenues of member firms (noting more than half, and sometimes more than 80%, of store revenues can be attributable to subscription sales), but not on the number of firms that sell subscriptions or how many subscriptions they sell. Similarly, although it commented subscriptions could be purchased in person, on the world wide web, via a mobile app, or at an automated teller, it provided no data on the relative shares of subscription purchases through these channels or the cancellation mechanisms made available to consumers. The objections ICA raised to a Rule requiring its members to offer cancellation by any method other than in-person strongly suggests that most member firms currently only offer cancellation that way, suggesting that those who sell on the internet, via a mobile app and (possibly) at an automated teller may already be in violation of ROSCA if in-person cancellations are a violation of ROSCA's "simple cancellation mechanism" requirement. IFA (FTC-2023-0033-0856) provided data from its database on the number of franchisees operating fitness establishments, spa/massage studios, entertainment facilities, and preventative healthcare facilities in the U.S., but provided no information on what share of firms sold subscriptions or the media through which consent was obtained or cancellation mechanisms were offered. In a later comment (FTC-2024-0001-0009), IFA noted consumers of member firms used the alternative of "freezing" their memberships at rates of 10%-40% but did not provide information on what the "freezing" mechanism was or what cancellation mechanisms were available to consumers.

106,000, that it has previously estimated to be marketers of negative option plans. This approach comports with a general proposition made by the report submitted by IAB.⁶¹²

Accordingly, the Commission makes the following estimates of initial year compliance costs.

Familiarization costs: All 106,000 firms selling negative options will collectively incur final Rule familiarization costs of between \$35.97 million and \$341.22 million.

Disclosure costs: 19,875 firms (i.e., $.1875 \times 106,000$) will incur no costs in bringing their disclosures into compliance with the requirements of the final Rule because their disclosures are already compliant. The remaining 86,125 firms will collectively incur costs of between \$3.96 million (i.e., $\$45.95 \times 86,125$) and \$39.58 million (i.e., $\$459.50 \times 86,125$) to make their disclosures compliant with the final Rule.

Cancellation costs: 19,875 firms (i.e., $.1875 \times 106,000$) will incur no costs in bringing their cancellation mechanisms into compliance with the final Rule. 66,250 firms (i.e., $.625 \times 106,000$) collectively will incur costs of between \$3.04 million (i.e., $1 \times \$45.95 \times 66,250$) and \$24.35 million (i.e., $8 \times \$45.95 \times 66,250$) to bring their online cancellation mechanisms into compliance with the final Rule by relabeling consumer-facing elements of their existing cancellation architecture. 19,875 firms (i.e., $.1875 \times 106,000$) collectively will incur costs of between \$0 and \$10.57 million (i.e., $.19,875 \times \$532.05$) to bring their telephonic cancellation mechanisms into compliance with the final Rule.

The Commission notes that this analysis does not quantify costs for the firms selling negative option plans that offer only in-person or by-mail cancellation. The Commission assumes that, in complying with this final Rule, these firms will choose to provide the alternative cancellation method (by phone, online, or both) that makes the most economic sense. The Commission also assumes that the cost of processing a cancellation over the phone should be similar to or less than the cost of processing a cancellation in person or by-mail for these firms. Therefore, the Commission assumes that these firms will not incur significant compliance

⁶¹² See Carrigan-Walster, FTC-2024-0001-0026 (employing a similar assumption: "Many firms using negative option marketing present their offers through the web. For those firms that present offers through other means, web developer time is used as a proxy for worker time to create the presentation of the offers.").

costs to provide an alternative cancellation method.

Recordkeeping costs: Collectively, firms will incur recordkeeping costs of \$6.54 million annually.

Total Initial Year Costs: Summing costs enumerated above, the Commission estimates the costs of the Rule in the first year will range between \$49.52 and \$422.26 million. These costs

are presented in Table 6. The Commission assumes that these costs will be incurred by the end of the initial year following the Rule's implementation.

TABLE 6—TOTAL INITIAL YEAR COMPLIANCE COSTS
[In millions, 2023 dollars]

	Low	High
Familiarization Costs	\$35.97	\$341.22
Disclosure Costs	3.96	39.57
Cancellation Mechanisms Costs	3.04	34.93
Recordkeeping Costs	6.54	6.54
Total Initial Year Costs	49.52	422.26

(3) Ongoing Compliance Costs, Years 2 Through 10

Compliant disclosures, cancellation paths, and consumer-facing information about cancellation mechanisms will form a “template” that can be used without any incremental compliance costs as new subscription products are added to a marketer’s retinue of products offered for sale via a negative option plan. The information relevant to the sale of a new product may be “dropped” into the template in a fill-in-the-blank way. The Commission assumes marketers, in the ordinary course of business, know what is required for the disclosures (e.g., the amounts consumers will be charged, when, by date or frequency, such charges will occur, when consumers must act to stop recurring charges, etc.) and consider the costs of entering this information into established disclosure templates to be a routine cost of doing business, not an incremental cost required by compliance with the final Rule. The same will also be true for negative option plans that are telemarketed or sold in person; once a telemarketing script or an in-person sales disclosure form is developed in the initial year of compliance, it becomes a template that readily can be used as new subscription products are offered over time. Accordingly, once a marketer comes into compliance with the final Rule there should be no incremental costs of ongoing compliance with respect to disclosures and cancellation mechanisms, and the costs of adding, changing, or deleting products the marketer offers for sale via negative option will be no different from what they would have been absent the final Rule.

The Commission can seek redress or civil penalties for violations of the final Rule. Absent the final Rule, enforcement actions against unfair or deceptive negative option practices would be

brought under section 5 where civil penalties are not available and where, post-AMG, it is difficult to obtain redress. Accordingly, some negative option marketers may pay closer attention to underlying claims made for products marketed using negative option sales because of the monetary relief available for violations of the final Rule relative to a section 5 enforcement action. This, however, is no different than what any firm should do to assure that it is not in violation of section 5, and the Commission considers the costs of attentiveness to section 5 compliance as part of the existing regulatory baseline, not as costs that are incremental to complying with the final Rule.

The U.K.’s “Impact Assessment” of its regulatory treatment of subscription plans did not estimate ongoing compliance costs because “the size of these costs . . . are likely small in comparison to the one-off cost and benefits.”⁶¹³ In further support of this, the “Impact Assessment” cited a report that found that on-going costs were meaningful only in relation to sending reminders to consumers about their subscriptions, and only for firms that used postal mail delivery and not electronically delivered reminders.⁶¹⁴ The final Rule does not contain a “reminder” requirement, and so the ongoing costs of sending reminders to consumers, small though they may be, are not ongoing costs of compliance with the final Rule.

⁶¹³ U.K. “Impact Assessment” (2023) at 30.

⁶¹⁴ “We note for example, that Ofcom assessed . . . the business costs of providing customers with notifications at the end of their contracts. These involved possible ongoing costs related to identifying customers that needed notifications on an ongoing basis and providing them with the notification. After consultation with stakeholders, Ofcom only estimated the costs of providing consumers with letters, on the basis that only this medium had significant ongoing costs.” *Id.*

The experts’ report submitted by IAB estimated 10 hours of attorney time for annual compliance checks for the Rule proposed in the NPRM. Because the final Rule has removed the most complex (and, therefore, costly) features of the proposed Rule (e.g., double consent, the treatment of “saves” in cancellation flows, and the issuance of annual “reminders” for some subscriptions), the Commission assumes half of the annual compliance check hours assumed in IAB’s experts’ report, five hours, is an upper bound on attorney hours needed for annual compliance checks. Moreover, the Commission assumes that some firms will incur no incremental annual compliance check costs, either because their pre-existing business practices followed what the final Rule requires or because the platforms or payment processors they use provide compliant disclosures and cancellation flows.⁶¹⁵

Accordingly, the Commission estimates the aggregate annual costs of compliance checks to range between \$0 and \$44.97 million (i.e., 106,000 × 5 hours × \$84.84/hour). Inclusive of recordkeeping costs, total ongoing costs range between \$6.54 million (i.e., \$0 + \$6.54 million) and \$51.51 million (i.e., \$44.97 million + \$6.54 million).

(4) Summary of Total Costs

Table 7 presents the initial and recurring costs of this Rule in each year, as well as the present discounted value and annualized costs over 10 years using a 2 percent discount rate. The Commission estimates that in Year 1, the initial costs will range between \$49.52 and \$422.26 million. In each of the following years, the Commission estimates that the recurring costs will range between \$6.54 and \$51.51 million. The Commission estimates that the

⁶¹⁵ See discussion in section VII.B.1.a.2 of this SBP and n.146.

present discounted value of costs over ten years, using a 2 percent discount rate, will range between \$100.89 and

\$826.15 million. The Commission estimates that these costs, annualized over ten years using a 2 percent

discount rate, would range between \$11.23 and \$91.97 million per year.

TABLE 7—TOTAL QUANTIFIED COSTS
[In millions, 2023 dollars]

Year	Low	High
1	\$49.52	\$422.26
2	6.54	51.51
3	6.54	51.51
4	6.54	51.51
5	6.54	51.51
6	6.54	51.51
7	6.54	51.51
8	6.54	51.51
9	6.54	51.51
10	6.54	51.51
Present Discounted Value of Costs over 10 years, 2% discount rate	100.89	826.15
Annualized Costs over 10 years, 2% discount rate	11.23	91.97

(d) Sensitivity Analysis

As a sensitivity analysis, the Commission considers an alternative method that does not rely on data from historical enforcement matters for distributing subscription cancellations across the baseline cancellation methods used to estimate quantified benefits. This alternative method assumes the majority of subscriptions are enrolled online and can be cancelled online in the baseline; whereas, in the main analysis, the majority of subscriptions are enrolled online and can only be cancelled by phone in the baseline. Compared with the main analysis, this alternative method produces lower total quantified benefits by \$419.77 to \$449.53 million annualized per year, yet the estimated range of quantified benefits still exceeds the estimated range of quantified costs.

(1) Number of Cancellations by Enrollment and Baseline Cancellation Method

Under this sensitivity analysis, the Commission assumes that the baseline number of subscriptions and cancellations is the same as in the main analysis. The Commission also assumes the number of in-person subscriptions, as proxied for by gym memberships, is the same as in the main analysis. What differs here is the approach for determining the share of cancellations likely to occur through online and telephone methods.

The main analysis uses enforcement data to determine the share of cancellations likely to occur through online and telephone methods. This data may suffer from selection bias if, among other factors, only the more egregious violations are pursued through enforcement methods. This approach also assumes no marketers of negative option plans comply with this Rule in the baseline. Further, because the data only include resolved cases and resolved cases tend to be older, they are less likely to reflect the current state of the market.

In this alternative analysis, the Commission uses statistics discussed in the NPRM—that 106,000 firms offer negative option plans and 2,000 of those firms are telemarketers.⁶¹⁶ Based on that, the Commission assumes 1.9 percent (*i.e.*, 2,000/106,000) of subscriptions and cancellations are enrolled and cancelled over the phone in the baseline. The Commission then assumes the remaining cancellations of subscriptions that were not enrolled over the phone or in person were instead enrolled online.⁶¹⁷

To estimate the distribution of baseline cancellation methods of subscriptions enrolled online, the Commission uses the results from an experiment in which a researcher

consented to 16 online subscriptions between August 2 to October 4, 2022 and then canceled each one, recording the time it took to cancel along with a variety of other obstacles faced in cancelling.⁶¹⁸ Of the 16 online subscriptions, three were found to be easy to cancel online, indicating they are likely in compliance with this Rule; three required phone calls to cancel; and the remaining 10 had a non-straightforward online cancellation method. Based on these results, the Commission assumes 18.75 percent (*i.e.*, 3/16) of online subscriptions have Rule-compliant cancellation methods in the baseline; 18.75 percent (*i.e.*, 3/16) of online subscriptions require telephone cancellation in the baseline; and 62.5 percent (*i.e.*, 10/16) of online subscription offer non-Rule-compliant online cancellations in the baseline.

Table 8 provides the number of subscription cancellations each year distributed across the enrollment and regulatory baseline cancellation methods: online enrollment and telephone cancellation; online enrollment and non-Rule-compliant online cancellation; online enrollment and Rule-compliant online cancellation; telephone enrollment and telephone cancellation; and in-person enrollment.

⁶¹⁶ See NPRM, 88 FR 24733.
⁶¹⁷ The Commission acknowledges this excludes subscriptions that are enrolled by mail, likely resulting in an overestimate of the number of subscriptions enrolled online.

⁶¹⁸ See Sindors (2023). Among the obstacles noted for otherwise seemingly simple online cancellations were that some websites did not use straight forward terms, such as “unsubscribe” or “cancel,” and instead put the cancellation path under titles such as “auto-renew” or “edit plan.”

TABLE 8—SENSITIVITY ANALYSIS: CANCELLATIONS BY ENROLLMENT AND BASELINE CANCELLATION METHOD
[In millions]

Year	Online enrollment, telephone cancellation	Online enrollment, non-compliant online cancellation	Online enrollment, compliant online cancellation	Telephone enrollment, telephone cancellation	In-person enrollment
1	63.79	212.63	63.79	6.87	14.62
2	64.28	214.27	64.28	6.93	14.73
3	64.78	215.92	64.78	6.98	14.84
4	65.27	217.56	65.27	7.03	14.96
5	65.76	219.21	65.76	7.08	15.07
6	66.26	220.85	66.26	7.14	15.18
7	66.66	222.19	66.66	7.18	15.27
8	67.06	223.54	67.06	7.22	15.37
9	67.46	224.88	67.46	7.27	15.46
10	67.87	226.23	67.87	7.31	15.55

(2) Estimating Total Benefits

To estimate total quantified benefits under this sensitivity analysis, the Commission uses the same matching of enrollment and baseline cancellation methods to per-cancellation benefit estimates as in the main analysis. The only difference here is that the Commission assumes consumers who experience Rule-compliant online cancellations in the baseline will not see any additional benefit as a result of this final Rule.

As in the main analysis, the Commission multiplies the number of cancellations in each category by the matched per-cancellation benefit on the low- and the high-end and then sums across all five categories to obtain total quantified benefits each year. Those totals are presented in Table 9 below. In the first year following implementation of the final Rule, the Commission estimates the benefits under this sensitivity analysis will range between \$254.85 million and \$4.88 billion. In Year 10, the Commission estimates the

benefits will range between \$271.15 million and \$5.20 billion. Using a 2 percent discount rate, the Commission estimates the present discounted value of benefits over 10 years to range between \$2.36 and \$45.28 billion. Annualized over 10 years using a 2 percent discount rate, the Commission estimates the benefits to range between \$263.06 million and \$5.04 billion per year. These annualized benefits estimates are between \$419.77 and \$449.53 million less per year than the estimates from the main analysis.

TABLE 9—SENSITIVITY ANALYSIS: ESTIMATES OF BENEFITS
[In millions, 2023 dollars]

Year	Low	High
1	\$254.85	\$4,883.26
2	256.82	4,921.01
3	258.79	4,958.77
4	260.76	4,996.53
5	262.73	5,034.29
6	264.70	5,072.05
7	266.31	5,102.91
8	267.92	5,133.77
9	269.54	5,164.63
10	271.15	5,195.49
Present Discounted Value of Benefits over 10 years, 2% discount rate	2,362.97	45,277.43
Annualized Benefits over 10 years, 2% discount rate	263.06	5,040.58
Difference in Annualized Benefits from Main Analysis	– 419.77	– 449.53

4. *An explanation of the reasons for the determination of the Commission that the final Rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen.*

As discussed above in sections I, II, and VII.A, the Commission determines the following deceptive or unfair practices are widespread in the negative option marketplace and cause consumer harm: (1) material misrepresentations made while marketing goods or services with negative option features; (2) failure

to provide important information about material terms prior to obtaining consumers' billing information and charging consumers; (3) lack of informed consumer consent; and (4) failure to provide consumers with a simple cancellation method, including failure to honor cancellation requests, refusal to provide refunds to consumers who unknowingly enrolled in programs, denying consumers refunds and forcing them to pay to return the unordered goods, and requiring consumers to

cancel using a different method than the one used to sign up for the program.

The final Rule amendments prohibit sellers from misrepresenting material facts in connection with promoting or offering for sale a good or service with a negative option feature, require negative option sellers to disclose certain important information about negative option features, obtain a consumer's express informed consent and maintain records of consumer consent for three years after the initial transaction (unless the seller satisfies

the technological exemption), and provide consumers a simple mechanism for cancellation. In promulgating the final Rule, the Commission sought to enhance consumer protections while avoiding detailed, prescriptive requirements that would impede innovation.

5. *A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis and a summary of the assessment by the Commission of such issues.*

Several commenters (e.g., NCTA, IAB) raised concerns over the Commission's conclusions regarding the economic effect of the proposed Rule. NCTA asserted the NPRM lacked any meaningful cost-benefit analysis, suggesting compliance with the proposed Rule would result in significant costs to its members.⁶¹⁹ Among other things, NCTA said its members would be required to implement changes to their existing customer processes, review and revise existing disclosures, and revamp recordkeeping systems. During the informal hearing process, NCTA further argued it could cost major cable operator members between \$12–25 million to comply with the proposed Rule.⁶²⁰ Additional commenters also suggested compliance with the proposed Rule would cost more than what the Commission estimated. None of them, however, offered any empirical analysis of the issue. In response to these comments, and following the presiding officer's recommended decision, the Commission provides the detailed cost-benefit analysis above in Section X.B.3.

XI. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires the Commission to conduct an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with a final rule,

unless the Commission certifies the rule will not have a significant economic impact on a substantial number of small entities.⁶²¹ The Regulatory Flexibility Act further states the required elements of the FRFA may be performed in conjunction with or as part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of the FRFA.⁶²²

In the NPRM, the Commission provided an IRFA, stating its belief that the proposal will not have a significant economic impact on small entities, and solicited comments on the burden on any small entities that would be covered. Specifically, the Commission acknowledged it did not have sufficient empirical data to determine whether the proposed amendments may affect a substantial number of small entities; therefore, the Commission sought comment on the percentage of affected companies that qualify as small businesses.

The Commission reviewed and considered the comments in response to the NPRM and determined, as an alternative to finalizing the proposed Rule in its entirety, to modify the Rule. In particular, the Commission decided to limit the material terms to be disclosed immediately adjacent to consent for the negative option feature; remove the limitation on saves and the accompanying recordkeeping requirement; remove the annual reminder provision; and modify the length of the recordkeeping requirement for verification of consent by fixing it to three years and provide an alternative method of compliance. After careful consideration of the comments and following the Commission's determination not to finalize the proposed Rule in its entirety, the Commission certifies that the final Rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, because the Commission included an IFRA in the NPRM, the Commission has also performed an FRFA below, and comments to the IFRA are discussed below.

A. A statement of the need for, and objectives of, the Rule.

The Commission describes the need for and the objectives of the final Rule in section X.B.1 to the Final Regulatory Analysis.

B. A statement of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, a statement of the assessment of the agency of such issues,

and a statement of any changes made in the proposed Rule as a result of such comments.

Several commenters raised issues about the proposed Rule's economic impact on small businesses. For instance, NFIB asked the Commission to adopt a special provision that would limit enforcement of the Rule against small businesses (fewer than 50 employees) to instances of willful or repeated violations, and set up a program for education on compliance.⁶²³ IFA and IHRSA encouraged the Commission to conduct a "Small Business Regulatory Impact Analysis" to determine how the proposal will impact small businesses.⁶²⁴ IHRSA stated that small businesses in the health and fitness industry operate at "much different capacity" than larger industries, noting 44% of U.S. small businesses have less than three months of cash reserves, making them more vulnerable to disruptions.⁶²⁵ Similarly, ACT App Association noted that roughly 20% of small business startups fail in the first year due to scarcity in financial resources.⁶²⁶

Other commenters, including PDMI, ESA, Joint Small Business Digital Economy Innovators, and ICA, generally stated the proposed Rule would impose unnecessary and undue burdens on small businesses, but did not offer any detailed empirical data for the Commission to consider.⁶²⁷

In response, the Commission first notes its sensitivity to small businesses' concerns. It provides numerous free resources through the Bureau of Consumer Protection Business Center web page⁶²⁸ to assist businesses of all sizes in complying with the law and will engage in consumer and business education campaigns about this Rule. Second, in consideration of comments regarding regulatory burden, the Commission clarifies or modifies the Rule in several significant ways: (1) it defines "material" and provides several concrete categories of material facts to ensure businesses have a clear understanding of how it will interpret materiality under the Rule; (2) it limits the number of terms that must mandatorily appear "immediately adjacent" to the request for consent to

⁶¹⁹ NCTA, FTC–2023–0033–0858; IAB, FTC–2023–0033–1000. See also IFA, FTC–2023–0033–0856; USTelecom, FTC–2023–0033–0876; RILA, FTC–2023–0033–0883; Coalition, FTC–2023–0033–0884; Chamber, FTC–2023–0033–0885 (urging the Commission to refine its cost benefit analysis).

⁶²⁰ FTC–2024–0001–0011; see also Asurion, FTC–2023–0033–0878 (stating the Commission's estimated annual labor costs are understated, and projecting the costs to Asurion and its clients would be millions of dollars); SCIC, FTC–2023–0033–0879 (cost of compliance for the service contract industry would be substantially higher than cost of compliance for unregulated entities, and disproportionately borne by small businesses; APCIA, FTC–2023–0033–0996 (same)).

⁶²¹ See 5 U.S.C. 603–605.

⁶²² 5 U.S.C. 605.

⁶²³ NFIB, FTC–2023–0033–0789.

⁶²⁴ IFA, FTC–2023–0033–0856; IHRSA, FTC–2023–0033–0863.

⁶²⁵ IHRSA, FTC–2023–0033–0863.

⁶²⁶ ACT App Association, FTC–2023–0033–0874.

⁶²⁷ PDMI, FTC–2023–0033–0864; ESA, FTC–2023–0033–0867; Joint Small Business Digital Economy Innovators, FTC–2023–0033–0875; ICA, FTC–2023–0033–1142.

⁶²⁸ <https://www.ftc.gov/business-guidance>.

the negative option feature; (3) it removes the requirement to obtain separate affirmative consent to “the rest of the transaction” and modifies the recordkeeping requirement; (4) it removes the saves and annual reminder requirements, which also should reduce recordkeeping and compliance burdens. Additionally, the Commission delays the effective date of the final Rule for 180 days to allow time for implementation (except for the provisions related to misrepresentations and other procedural requirements, which should not be an added burden for businesses already complying with the law and which take effect 60 days after publication of the final Rule).

C. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed Rule, and a detailed statement of any change made to the proposed rule in the final Rule as a result of the comments.

The Small Business Administration did not file comments in response to the proposed Rule.

D. A description of and an estimate of the number of small entities to which the Rule will apply or an explanation of why no such estimate is available.

The final Rule affects sellers, regardless of industry, engaged in making negative option offers, defined by the final Rule to mean any person “selling, offering, charging for, or otherwise marketing goods or services with a Negative Option Feature.”⁶²⁹ Small entities in potentially any industry could incorporate a negative option feature into a sales transaction.⁶³⁰ The Commission is unaware, however, of any source of data identifying across every industry the number of small entities that routinely utilize negative option features. Although the NPRM requested comments on the percentage of affected companies that qualify as small businesses, and some trade association commenters indicated that some of their members were small businesses, these comments did not identify either the number or share of their small business members that sold negative option contracts.

E. A description of the projected reporting, recordkeeping, and other compliance requirements of the Rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The estimates of the recordkeeping requirements under the final Rule are set out within the Paperwork Reduction Act analysis in section XII below. As mentioned above, the Commission preliminarily determined the impact of the proposed requirements on small entities is most likely not significant. The small entities potentially covered by these amendments will include all such entities subject to the Rule (e.g., all entities selling goods or services through negative option programs). The professional skills necessary for compliance with the proposed amendments would include sales and clerical personnel. The Commission requested comment on these issues.

In the NPRM, The FTC estimated the majority of firms subject to the recordkeeping requirements already retained these types of records in the normal course of business. The FTC anticipated many transactions subject to the final Rule would be conducted via the internet, minimizing burdens associated with compliance. Additionally, most entities subject to the final Rule were likely to store data through automated means, which reduces compliance burdens associated with record retention. Furthermore, regarding the disclosure requirements, the Commission stated it was likely the substantial majority of sellers routinely provide these disclosures in the ordinary course as a matter of good business practice. Moreover, many State laws already require the same or similar disclosures as the Rule would mandate. Finally, some negative option sellers are already covered by ROSCA and the TSR and thus subject to similar disclosure requirements.

Commenters provided additional comments, suggesting small businesses will be significantly impacted, and the Commission underestimated the burdens. Recordkeeping and disclosure costs associated with the Rule became one of the issues designated for the informal hearing, after which the presiding officer determined “the issue is not genuinely disputed,” noting the failure of interested parties to “provide any evidence to establish what the costs *would be*,” as opposed to generalized complaints “costs will be *higher* than the NPRM’s estimates.”⁶³¹ As explained in the Paperwork Reduction Act estimates below and elsewhere in this SBP, the Commission made changes to the Rule based on the record. Specifically, the Commission determined to specify and thereby limit

the types of disclosures required, narrow the scope of entities covered (by excluding those solely involved in “promoting” negative option plans), curtail the length of time for retaining records (to only three years), and establish an option for sellers to eliminate having to keep records of consent if they have the requisite processes in place. Because neither the Commission nor the presiding officer at the informal hearing received evidence to dispute the recordkeeping and disclosure costs figures in the NPRM, the Commission adopts the NPRM’s analysis. Given the narrower scope of the final Rule, that analysis should be more conservative and tend to overstate the burden.

F. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final Rule and why each one of the other significant alternatives to the Rule considered by the agency which affect the impact on small entities was rejected.

In formulating the proposed amendments, the Commission made every effort to avoid imposing unduly burdensome requirements on sellers. To that end, the Commission avoided, where possible, proposing specific, prescriptive requirements that could stifle marketing innovation or otherwise limit seller options in using new technologies.

As explained above, in response to comments regarding regulatory burden, the Commission clarifies or modifies the Rule in several significant ways: (1) it defines “material” and provides several concrete categories of material facts to ensure businesses have a clear understanding of how it will interpret materiality under the Rule; (2) it limits the number of terms that must mandatorily appear “immediately adjacent” to the request for consent to the negative option feature; (3) it removes the requirement to obtain separate affirmative consent to “the rest of the transaction” and modifies the recordkeeping requirement; (4) it removes the saves and annual reminder requirements, which also should reduce recordkeeping and compliance burdens. Additionally, the Commission delays the effective date of the final Rule for 180 days to allow time for implementation (except for the provisions related to misrepresentations and other procedural requirements, which should not be an added burden

⁶³¹ Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042> (emphasis in original).

⁶²⁹ Rule § 425.2(g).

for businesses already complying with the law and which take effect 60 days after publication of the final Rule).

XII. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501 *et seq.*, requires Federal agencies to obtain Office of Management and Budget (“OMB”) approval before collecting information directed to ten or more persons. The current Rule contains various provisions that constitute information collection as defined by 5 CFR 1320.3(c), the OMB regulations implementing the PRA. In January 2024, OMB approved continuation of the Rule’s existing information collection (OMB Control No. 3084–0104). The final Rule makes changes in the Rule’s recordkeeping and disclosure requirements that will increase the PRA burden as detailed below. Accordingly, the Commission is submitting the final Rule and a Supplemental Supporting Statement to OMB for review under the PRA.⁶³² The associated burden analysis follows.

A. The Proposed Rule

In the NPRM, the Commission provided time and cost estimates for the proposed Rule’s recordkeeping and disclosure requirements, and solicited comments about their associated costs, including on: (1) whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.⁶³³

The NPRM also included staff’s estimate that the burden for recordkeeping compliance would be 53,000 hours and the estimated burden for disclosures would be 212,000 hours, for a total of 265,000 hours. These estimates are explained below.

Number of Respondents. FTC staff estimated there are 106,000 entities offering negative option features to consumers. This estimate is based primarily on data from the U.S. Census North American Industry Classification System (NAICS) for firms and establishments in industry categories wherein some sellers offer free trials, automatic renewal, prenotification

plans, and continuity plans. Based on NAICS information as well as its own research and industry knowledge, FTC staff identified an estimated total of 530,000 firms involved in such industries.⁶³⁴ However, FTC staff estimated that only a fraction of the total firms in these industry categories offer negative option features to consumers. For example, few grocery stores and clothing retailers, which account for approximately a third of the of the total estimate from all industry categories, are likely to regularly offer negative option features. In addition, some entities included in the total may qualify as common carriers, exempt from the Commission’s authority under the FTC Act. Accordingly, the Commission estimated approximately 106,000 business entities (20%) offer negative option features to consumers.

Recordkeeping Hours. FTC staff estimated the majority of firms subject to the Rule already retain the types of records in the normal course of business that would be required by the proposed Rule. Under such conditions, the time and financial resources needed to comply with disclosure requirements do not constitute “burden” under the PRA.⁶³⁵ Moreover, staff anticipated that many transactions subject to the Rule are conducted via the internet and most entities subject to the Rule are likely to store data through automated means, which reduces compliance burdens associated with record retention. Accordingly, staff estimated that 53,000 entities subject to the Rule will require approximately one hour per year to comply with the Rule’s recordkeeping requirements, for an annual total of 53,000 burden hours.

Disclosure Hours. Staff anticipated that the substantial majority of sellers already routinely provide the disclosures that would be required by the proposed Rule. For these sellers, the time and financial resources associated

with making these disclosures do not constitute a “burden” under the PRA because they are a usual and customary part of regular business practice. 5 CFR 1320.3(b)(2). Moreover, many State laws require the same or similar disclosures as the Rule mandates. In addition, approximately 2,000 negative option sellers are already covered by the TSR and subject to its disclosure requirements. Accordingly, FTC estimated the disclosure burden required by the Rule will be, on average, two hours each year for each seller subject estimated to be subject the Rule, for a total estimated annual burden of 212,000 hours.

Estimated Annual Labor Cost. To estimate labor costs for recordkeeping requirements, staff multiplied the 53,000 hours to comply with the proposed Rule’s recordkeeping provisions by a clerical wage rate of \$18.75/hour.⁶³⁶ The result is an annual cost of approximately \$993,750.

To estimate annual labor costs for disclosures for all entities, staff multiplied the 212,000 hours to comply with the proposed Rule’s disclosure provisions by a sales personnel wage rate of \$22.15/hour.⁶³⁷ The result is an annual cost of approximately \$4,695,800.

Thus, the estimated annual labor costs were \$5,689,550 [(\$993,750 recordkeeping) + (\$4,695,800 disclosure)].

Estimated Annual Non-Labor Cost. The NPRM stated capital and start-up costs associated with the Rule’s recordkeeping provisions are *de minimis*. Any disclosure or recordkeeping capital costs involved with the Rule, such as equipment and office supplies, would be costs borne by sellers in the normal course of business.

B. Comments Received and Informal Hearing

The NPRM sought comments on the PRA analysis and stated, “comments should provide any available evidence and data that supports their position, such as empirical data.”⁶³⁸ The Commission did not receive such evidence. A few commenters from businesses and industry groups, however, raised generalized concerns

⁶³² The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments.

⁶³³ 88 FR 24734.

⁶³⁴ Examples of these industries include sellers of software, streaming media, social media services, financial monitoring, computer security, fitness services, groceries and meal kits, dietary supplements, sporting goods, home service contracts, home security systems, office supplies, pet food, computer supplies, cleaning supplies, home/lawn maintenance services, personal care products, clothing sales, energy providers, newspapers, magazines, and books. The NAICS does not provide estimates for all of these categories. Where such data is unavailable, the staff has used its own estimates based on its knowledge of these industry categories.

⁶³⁵ Under the PRA, the time, effort, and financial resources necessary to comply with the collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) does not constitute a burden under the Rule where the associated recordkeeping is a usual and customary part of business activities. 5 CFR 1320.3(b)(2).

⁶³⁶ This figure is derived from the mean hourly wage shown for Information and Record Clerks. See Bureau of Labor Statistics, “Occupational Employment and Wages—May 2021,” at Table 1 (Mar. 31, 2022) (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021), <https://www.bls.gov/news.release/pdf/ocwage.pdf>.

⁶³⁷ This figure is derived from the mean hourly wage shown for Sales and related occupations. See *id.*

⁶³⁸ 88 FR 24730.

that the NPRM underestimated PRA-related costs.⁶³⁹

As noted earlier, the Commission set an informal hearing, at the request of interested parties, and appointed Administrative Law Judge Carol Fox Foelak as the presiding officer.⁶⁴⁰ Based on submissions by interested parties, and other information in the record, the presiding officer designated two disputed issues of material fact, including, “What will the recordkeeping and disclosure costs associated with the proposed rule be?”⁶⁴¹

Based on the record, the presiding officer concluded, “There is insufficient evidence to make a finding concerning the . . . recordkeeping and disclosure costs associated with the proposed rule,” and “in the absence of evidence, the issue is not genuinely disputed.”⁶⁴² The presiding officer further explained: “IAB made a well-reasoned argument that the costs will be *higher* than the NPRM’s estimates, generalizing from limited estimates that it, IFA, and NCTA provided. However, it did not provide any evidence to establish what the costs *would be*.”⁶⁴³

C. Final PRA Analysis

As previously discussed, the Commission made changes to the Rule based on the record. Some of these changes, in turn, affect the PRA analysis. Specifically, the Commission determined to specify and thereby limit the types of disclosures required, narrow the scope of entities covered (by excluding those solely involved in “promoting” negative option plans), curtail the length of time for retaining records (to only three years), and establish an option for sellers to eliminate having to keep records of consent if they have the requisite processes in place. Neither the Commission nor the presiding officer at the informal hearing received evidence

to dispute the specific PRA-related figures in the NPRM. For the final Rule, the Commission adopts the following PRA analysis.

Number of Respondents. The Commission received no evidence to dispute the NPRM’s statements on the number of entities offering negative option features to consumers, so the Commission adopts the NPRM estimate that there are 106,000 such entities. Although the final Rule is narrower in that it excludes the term “promote” from its scope, the Commission retains the estimate of 106,000 entities for the purposes of this analysis, which would be more conservative and tend to overstate the burden.

Recordkeeping Hours. The Commission received no evidence to dispute the NPRM’s statements on recordkeeping under the PRA. As the final Rule is narrower, the time and financial resources needed to comply with disclosure requirements still do not constitute “burden” under the PRA.⁶⁴⁴ Accordingly, the Commission adopts the NPRM estimate that 53,000 entities subject to the Rule will require approximately one hour per year to comply with the Rule’s recordkeeping requirements, for an annual total of 53,000 burden hours.

Disclosure Hours. Similarly, the Commission received no evidence to dispute the NPRM’s statements on disclosure hours under the PRA. As the final Rule narrowed and delineated the types of disclosures required, the time and financial resources associated with making these disclosures is even less than under the proposed Rule, which also did not constitute a “burden” under the PRA because they are a usual and customary part of regular business practice. 5 CFR 1320.3(b)(2). Accordingly, the Commission adopts the NPRM estimate that the disclosure burden required by the Rule will be, on average, two hours each year for each seller subject estimated to be subject the Rule, for a total estimated annual burden of 212,000 hours.

Estimated Annual Labor Cost. The Commission received no evidence to dispute the NPRM’s statements on labor costs under the PRA. For the final Rule, the Commission updates its labor cost estimates by using more recent wage data. For recordkeeping, staff multiplied the 53,000 estimated hours to comply

with the Rule’s recordkeeping provisions by a clerical wage rate of \$20.94/hour,⁶⁴⁵ to yield an annual cost of approximately \$1,109,820. For disclosure compliance, staff multiplied the 212,000 estimated hours by an hourly wage rate for sales personnel of \$25.62,⁶⁴⁶ to yield an annual cost of \$5,431,440. Thus, the estimated total annual labor costs are \$6,541,260 [(\$1,109,820 recordkeeping) + (\$5,431,440 disclosure)].

Estimated Annual Non-Labor Cost. The Commission received no evidence to dispute the NPRM’s statements that capital and start-up costs associated with the Rule’s recordkeeping provisions are *de minimis* under the PRA. The Commission adopts those findings.

List of Subjects in 16 CFR Part 425

Advertising, Consumer protection, Trade practices.

■ For the reasons stated in the preamble, the Federal Trade Commission revises 16 CFR part 425 to read as follows:

PART 425—RULE CONCERNING RECURRING SUBSCRIPTIONS AND OTHER NEGATIVE OPTION PROGRAMS

Sec.

- 425.1 Scope.
- 425.2 Definitions.
- 425.3 Misrepresentations.
- 425.4 Important information.
- 425.5 Consent.
- 425.6 Simple cancellation (“Click to Cancel”).
- 425.7 Relation to State laws.
- 425.8 Exemptions.
- 425.9 Severability.

Authority: 15 U.S.C. 41 through 58.

§ 425.1 Scope.

This Rule contains requirements related to any form of negative option program in any media, including, but not limited to, Interactive Electronic Media, telephone, print, and in-person transactions.

§ 425.2 Definitions.

Billing Information means any data that enables any person to access a consumer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

⁶⁴⁵ This figure is derived from the mean hourly wage shown for Information and Record Clerks. See Bureau of Labor Statistics, “Occupational Employment and Wages, May 2023, 43–9061 Office Clerks, General,” <https://www.bls.gov/oes/current/oes439061.htm>.

⁶⁴⁶ This figure is derived from the mean hourly wage shown for Sales and related occupations. See *id.*

⁶³⁹ Sirius XM, FTC–2023–0033–0857; SCIC, FTC–2023–0033–0879; Coalition, FTC–2023–0033–0884; ETA, FTC–2023–0033–1004; Direct Marketing Companies, FTC–2023–0033–1016. In addition, one commenter seemingly confused PRA-related costs with full implementation of the Rule, but still offered only generalized points. See Asurion, FTC–2023–0033–0878. Another commenter queried whether the Commission’s estimate of the number of firms offering negative option features include B2B sales with automatic renewal clauses. ETA, FTC–2023–0033–1004. The staff estimate did not seek to exclude such sellers.

⁶⁴⁰ Hr’g Notice, 88 FR 85525.

⁶⁴¹ Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042>.

⁶⁴² Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042>.

⁶⁴³ Recommended Decision by Presiding Officer, <https://www.regulations.gov/comment/FTC-2024-0001-0042>.

⁶⁴⁴ Under the PRA, the time, effort, and financial resources necessary to comply with the collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) does not constitute a burden under the Rule where the associated recordkeeping is a usual and customary part of business activities. 5 CFR 1320.3(b)(2).

Charge, Charged, or Charging means any attempt to collect money or other consideration from a consumer, including but not limited to causing Billing Information to be submitted for payment, including against the consumer's credit card, debit card, bank account, telephone bill, or other account.

Clear and Conspicuous means that a required disclosure is easily noticeable (i.e., difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

(1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

(2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

(3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

(4) In any communication using an Interactive Electronic Medium, such as the internet, mobile application, or software, the disclosure must be unavoidable.

(5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

(6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

(7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

(8) When the representation or sales practice targets a specific audience, such as children, older adults, or the terminally ill, "ordinary consumers" includes members of that group.

Interactive Electronic Medium is any electronic means of communicating (except via telephone calls), including internet, mobile application, text, chat, instant message, email, software, or any online service.

Material means likely to affect a person's choice of, or conduct regarding, goods or services.

Negative Option Feature is a provision of a contract under which the consumer's silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the negative option seller as acceptance or continuing acceptance of the offer, including, but not limited to:

- (1) An automatic renewal;
- (2) A continuity plan;
- (3) A free-to-pay conversion or fee-to-pay conversion; or
- (4) A pre-notification negative option plan.

Negative Option Seller means the person selling, offering, charging for, or otherwise marketing a good or service with a Negative Option Feature.

§ 425.3 Misrepresentations.

In connection with promoting or offering for sale any good or service with a Negative Option Feature, it is a violation of this part and an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act ("FTC Act") for any Negative Option Seller to misrepresent, expressly or by implication, any Material fact, including any of the following:

- (a) The Negative Option Feature or any term of the Negative Option Feature, including consumer consent, any deadline to prevent or stop a Charge, or the cancellation of the Negative Option Feature;
- (b) Cost;
- (c) Purpose or efficacy of the underlying good or service;
- (d) Health or safety; or
- (e) Any other Material fact.

§ 425.4 Important information.

(a) *Disclosures.* In connection with promoting or offering for sale any good or service with a Negative Option Feature, it is a violation of this part and an unfair or deceptive act or practice in violation of section 5 of the FTC Act for a Negative Option Seller to fail to disclose to a consumer, prior to obtaining the consumer's Billing Information, all Material terms, regardless of whether those terms directly relate to the Negative Option Feature, and including but not limited to:

- (1) That consumers will be Charged for the good or service, or that those Charges will increase after any applicable trial period ends, and, if applicable, that the Charges will be on a recurring basis, unless the consumer timely takes steps to prevent or stop such Charges;

(2) Each deadline (by date or frequency) by which the consumer must act to prevent or stop the Charges;

(3) The amount (or range of costs) the consumer will be Charged and, if applicable, the frequency of the Charges a consumer will incur unless the consumer takes timely steps to prevent or stop those Charges; and

(4) The information necessary for the consumer to find the simple cancellation mechanism required pursuant to § 425.6.

(b) *Form and content of required information.* (1) Clear and Conspicuous: Each disclosure required by paragraph (a) of this section must be Clear and Conspicuous.

(2) Placement:

(i) The disclosures required by paragraphs (a)(1) through (4) of this section must appear immediately adjacent to the means of recording the consumer's consent for the Negative Option Feature; and

(ii) The disclosures required by paragraph (a) of this section (including, but not limited to, the disclosures required by paragraphs (a)(1) through (4) of this section) must appear before obtaining the consent required pursuant to § 425.5.

(3) *Other Information:* All communications, regardless of media, must not contain any other information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to read, hear, see, or otherwise understand the disclosures required by paragraph (a) of this section.

§ 425.5 Consent.

(a) *Express informed consent.* In connection with promoting or offering for sale any good or service with a Negative Option Feature, it is a violation of this part and an unfair or deceptive act or practice in violation of section 5 of the FTC Act for a Negative Option Seller to fail to obtain the consumer's express informed consent before Charging the consumer. In obtaining such expressed informed consent, the Negative Option Seller must:

(1) Obtain the consumer's unambiguously affirmative consent to the Negative Option Feature offer separately from any other portion of the transaction;

(2) Not include any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their express informed consent to the Negative Option Feature; and

(3) Keep or maintain verification of the consumer's consent for at least three years. However, if the seller can

demonstrate by a preponderance of the evidence that it uses processes ensuring no consumer can technologically complete the transaction without consent, such seller does not have to maintain these records for such transactions.

(b) *Requirements for Negative Option Features covered in the Telemarketing Sales Rule.* Negative Option Sellers covered by the Telemarketing Sales Rule must comply with all applicable requirements provided in 16 CFR part 310, including, for transactions involving preacquired account information and a free-to-pay-conversion feature, obtaining from the customer, at a minimum, the last four (4) digits of the account number to be charged and making and maintaining an audio recording of the entire telemarketing transaction as required by 16 CFR part 310.

(c) *Documentation of unambiguously affirmative consent for written offers.* Except for transactions covered by the preauthorized transfer provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693e) and Regulation E (12 CFR 1005.10), a Negative Option Seller will be deemed in compliance with the requirements of paragraph (a)(1) of this section for all written offers (including over the internet or phone applications), if that seller obtains the required consent through a check box, signature, or other substantially similar method, which the consumer must affirmatively select or sign to accept the Negative Option Feature and no other portion of the transaction. The consent request must be presented in a manner and format that is clear, unambiguous, non-deceptive, and free of any information not directly related to the consumer's acceptance of the Negative Option Feature.

§ 425.6 Simple cancellation (“Click to Cancel”).

(a) *Simple mechanism required for cancellation.* In connection with promoting or offering for sale any good or service with a Negative Option Feature, it is a violation of this Rule and an unfair or deceptive act or practice in violation of section 5 of the FTC Act for the Negative Option Seller to fail to provide a simple mechanism for a consumer to cancel the Negative Option Feature; avoid being Charged, or Charged an increased amount, for the good or service; and immediately stop any recurring Charges.

(b) *Simple mechanism at least as simple as consent.* The simple mechanism required by paragraph (a) of this section must be at least as easy to use as the mechanism the consumer

used to consent to the Negative Option Feature.

(c) *Minimum requirements for simple mechanism.* At a minimum, the Negative Option Seller must provide the simple mechanism required by paragraphs (a) and (b) of this section through the same medium the consumer used to consent to the Negative Option Feature, and:

(1) For cancellation by Interactive Electronic Medium, the simple cancellation mechanism must be easy to find when the consumer seeks to cancel. Compliance with the disclosure required under § 425.4(a)(4) does not discharge this obligation. In no event shall a consumer be required to interact with a live or virtual representative (such as a chatbot) to cancel if the consumer did not do so to consent to the Negative Option Feature.

(2) For cancellation by telephone call, the Negative Option Seller must promptly effectuate cancellations requested by the consumer via a telephone number that is answered or records messages, made available during normal business hours, and not more costly to use than the telephone call the consumer used to consent to the Negative Option Feature.

(3) For cancellation of consent obtained in person, in addition to offering cancellation, where practical, via an in-person method similar to that the consumer used to consent to the Negative Option Feature, the Negative Option Seller must offer the simple mechanism through an Interactive Electronic Medium or by providing a telephone number. The alternate simple mechanism required by this paragraph must satisfy all requirements of paragraphs (c)(1) and (2) of this section, as applicable. If the Negative Option Seller offers the alternate mechanism by providing a telephone number, the seller shall not erect a cost-barrier to cancellation by imposing any unnecessary or unreasonable cost for the cancellation call.

§ 425.7 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to negative option requirements, except to the extent it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if it affords any consumer greater protection than provided under this part.

§ 425.8 Exemptions.

Any person to whom this part applies may petition the Commission for a partial or full exemption. The Commission may, in response to petitions or on its own authority, issue partial or full exemptions from this part if the Commission finds application of this part's requirements is not necessary to prevent the acts or practices to which this part relates. The Commission shall resolve petitions using the procedures provided in 16 CFR 1.31. If appropriate, the Commission may condition such exemptions on compliance with alternative standards or requirements to be prescribed by the Commission.

§ 425.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

By direction of the Commission,
Commissioners Holyoak and Ferguson
dissenting.

April J. Tabors,
Secretary.

Note: The following statements will not appear in the Code of Federal Regulations.

Statement of Commissioner Rebecca Kelly Slaughter

As is common in rulemaking proceedings, this Final Rule that the Commission promulgates is somewhat different from what it originally proposed—clarified, narrowed, and ultimately improved by the process of grappling with the substantial record of comments submitted by the public. I extend my heartfelt thanks to everyone who submitted comments; to the talented staff in our Division of Enforcement and the East Central Regional Office who diligently shepherded this proceeding, thoroughly considered all those comments, and recommended thoughtful revisions; and to my colleagues for their deep engagement with this issue of great importance, including former Chairman Joe Simons, under whose leadership the Commission initiated this rulemaking proceeding.

I write separately to draw attention to the comment record about a provision that the Commission proposed but ultimately does not finalize, proposed § 425.7, which would have required annual reminders of subscriptions that do not involve the delivery of physical goods.¹ Americans understand the importance and value of such a requirement; many have discovered that they or their parents had been paying for years or even decades for a service wholly unused, such as a dial-up internet service from the

¹ See Negative Option Rule, 88 FR 24716, 24736 (proposed Apr. 24, 2023) (“Annual reminders for negative option features not involving physical goods.”) (to be codified at 16 CFR 425.7), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>.

1990s.² The reason that the Commission declines to finalize this proposal is not that it lacks policy merit but that the record in total does not support its inclusion in the Final Rule as proposed.³ Of course, we are always mindful that our authority under the FTC Act to issue rules under section 18 has limits; sometimes, as here, those limits prevent us from codifying in a rule practices that we might, as a matter of policy, prefer to require explicitly.

Congress and State legislatures, by contrast, have plenary authority to require such a reminder. This spring, for example, in a show of bipartisanship, Virginia Governor Glenn Youngkin signed into law legislation sponsored by Delegate Michelle Lopes Maldonado, H.B. 744, which requires that subscriptions that renew annually provide to the consumer a notice of the upcoming renewal and the opportunity to cancel via between 30 and 60 days before the consumer is charged for the renewal.⁴ The comment record compiled in this rulemaking proceeding strongly supports the wisdom of Federal and State legislators' carefully considering adopting such a law, and the Final Rule's omission of such a provision should be understood only as a reflection of the Commission's cautious approach to its jurisdictional limits and not as related to the merits of a policy that requires annual reminders for subscription services.

Dissenting Statement of Commissioner Melissa Holyoak

"Article I of the Constitution vests 'all legislative Powers herein granted' in

Congress. 'By vesting the lawmaking power in the people's elected representatives, the Constitution sought to ensure not only that all power would be derived from the people, but also that those entrusted with it should be kept in dependence on the people.'"¹ Whenever we engage in rulemaking, the Commission should recall that Article I of the Constitution vests legislative powers in Congress, not with agencies. Because of that, it is elected officials that delineate the boundaries, and set the requirements, that we as Commissioners must adhere to. I believe the Commission exceeds those boundaries and requirements in amendments to the Negative Option Rule, 16 CFR part 425, ("Rule") it finalizes today. Instead of pursuing targeted enforcement efforts or finalizing a rule consistent with the Commission's authority under section 18 of the FTC Act,² the Commission has used its limited resources to promulgate a broader regulation that may not survive legal challenge.³

The likely unlawful character of the rule is compounded by the Majority's race to cross the finish line. Why the rush? There is a simple explanation. Less than a month from election day, the Chair is hurrying to finish a rule that follows through on a campaign pledge made by the Chair's favored presidential candidate.⁴

The Majority votes today to approve a final trade regulation rule amendment to the existing negative option rule. This amendment greatly expands the prior rule, which had covered now-rare prenotification plans (e.g., book-of-the-month clubs)—and goes well beyond what existing laws, such as the Restore Online Shoppers' Confidence Act ("ROSCA"),⁵ Telemarketing Sales Rule

("TSR"),⁶ or Regulation E,⁷ require. The now-capacious Rule creates potential civil penalty liability for: any misrepresentation of material fact made in connection with the marketing of a product or service that has a negative option feature (§ 425.3); failure to disclose all material terms before obtaining billing information in connection with a negative option (§ 425.4); failure to obtain express informed consent before charging in connection with a negative option (§ 425.5); and failure to provide a simple mechanism for cancelling a negative option (§ 425.6). The Rule also preempts inconsistent State laws (§ 425.7).

I respectfully dissent for three reasons. First, this rulemaking did not follow the FTC Act's section 18 requirements for rulemaking because: (1) the Rule is much broader than the "area of inquiry" proposed by the advance notice of proposed rulemaking ("ANPR"); (2) the Rule fails to define with specificity acts or practices that are unfair or deceptive, improperly generalizing from narrow industry-specific complaints and evidence to the entire American economy; and (3) the Rule fails to demonstrate that the unfair or deceptive acts or practices related to negative option billing are "prevalent."⁸ Second, the Rule's breadth incentivizes companies to avoid negative option features that honest businesses and consumers find valuable. Third, the Rule represents a missed opportunity to make useful amendments to the preexisting negative option rule within the scope of the Commission's authority.

Such amendments could have provided greater clarity to businesses about the patchwork of Federal laws pertaining to negative options and lawfully used our section 18 rulemaking authority to fill potential gaps including, for example, cancellation requirements. Indeed, I am very concerned that consumers are sometimes misled by companies using deceptive negative option features. The Rule represents a missed opportunity to devote scarce staff resources to bringing enforcement actions related to negative option features using the clear tools that Congress gave us, rather than conducting an overbroad rulemaking that cost years of staff time to propose and finalize, but will likely not survive legal challenge.

Today's rulemaking did not need to end this way. Had political leadership at the Commission taken more time to engage with other Commissioners to refine and improve the Rule, my vote and statement would look very different. Instead, less than a month from November 5, the Chair has put political expediency over getting things right. Unfortunately, pushing politically motivated rulemakings has not been the exception with the Majority.⁹ Today, I believe we are seeing another low in our abuse and misuse of the tools Congress has given us. Rather than engage in blatant electioneering to advance political ends, the Commission should have

² See, e.g., Cmt. of the Attorneys General of New York, Pennsylvania, Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, Vermont, Washington, and Wisconsin (June 23, 2023), at 15 ("Subscription management has become an entire industry; consumers can choose from a variety of companies that offer to monitor their recurring subscriptions. We believe that consumers should not have to sign up for yet another service—one that comes with privacy and security risks, as subscription monitoring services require sharing financial account and other sensitive information—in order to effectively manage their subscriptions."), <https://www.regulations.gov/comment/FTC-2023-0033-0886>; Cmt. of Consumer Action, Consumer Federation of America, Demand Progress Education Fund, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low-income clients), and National Consumer League (June 23, 2023), at 7 ("Consumers deserve to know when they are about to be charged automatically, with a chance to opt out."), <https://www.regulations.gov/comment/FTC-2023-0033-0880>; Cmt. of Profs. Caruso, Raghavan, Sovern, Vladeck, Pridgen, Janger, Ondersma, and Block-Lieb (June 23, 2023), at 7–8 (encouraging the Commission to adopt the reminder requirement without narrowing it), <https://www.regulations.gov/comment/FTC-2023-0033-0861>.

³ See Fed. Trade Comm'n, Negative Option Rule, Final Rule Statement of Basis and Purpose (Oct. 16, 2024) (draft as submitted to the Office of the Federal Register), at 138–44.

⁴ See 2024 Va. Acts, H. 744, Apr. 4, 2024 (to be codified at section 59.1–207.46(E)), <https://legacylis.virginia.gov/cgi-bin/legp604.exe?241+ful+CHAP0452+pdf>.

¹ Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In the Matter of the Non-Compete Clause Rule*, FTC Matter No. P201200, at 1 (June 28, 2024) (quoting U.S. Const. Art. I and *W. Virginia v. EPA*, 597 U.S. 697, 737–38 (2022) (Gorsuch, J., concurring)) (cleaned up), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf.

² 15 U.S.C. 57a.

³ Cf. Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *supra* note 1, at 2 ("My dissent should not, however, be interpreted to mean that I endorse all non-compete agreements. To the contrary, I would support the Commission's prosecution of anti-competitive non-compete agreements, where the facts and law support such enforcement. That is why I am particularly disappointed that the Commission dedicated the Commission's limited resources to a broad rulemaking that exceeds congressional authorization and will likely not survive legal challenge.") (citation omitted).

⁴ See, e.g., *A New Way Forward for the Middle Class: A Plan to Lower Costs and Create an Opportunity Economy*, KamalaHarris.com, at 33 (Sept. 2024) ("Under her leadership as Vice President, the Administration has launched a historic effort to crack down on junk fees and save consumers time and money. This includes [a rule] to . . . make it as easy to cancel a subscription as it is to subscribe. . . . A Harris-Walz Administration will . . . continue to take on the everyday hassles that waste Americans' time and money, [including] subscriptions. . . .") (citing FTC press release), <https://kamalaharris.com/wp-content/uploads/2024/09/Policy-Book-Economic-Opportunity.pdf>.

⁵ 15 U.S.C. 8401–8405.

⁶ 16 CFR part 310.

⁷ 12 CFR 1005.10.

⁸ 15 U.S.C. 57a.

⁹ See generally Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *supra* note 1.

instead focused on stewarding its resources effectively and in ways that restore our institutional legitimacy, not further undermine it.

I. The historical context surrounding Congress's enactment of rulemaking requirements in section 18 of the FTC Act is important. Congress passed the Magnuson-Moss Warranty Act in 1975, which imposed exacting requirements and limitations on rulemaking regarding unfair or deceptive acts or practices.¹⁰ In the 1970s, the Commission tried to use its rulemaking and unfairness authority aggressively—for example, “to ban all advertising directed to children on the grounds that it was ‘immoral, unscrupulous, and unethical’ and based on generalized public policies to protect children.”¹¹ In response, Congress refused to fund the Commission, shutting it down for several days.¹² Even this harsh rebuff did not completely cool Congressional ire with the “National Nanny” (as the Washington Post—no bastion of conservative thought—facetiously dubbed the Commission).¹³ A 1979 Senate Report found that the agency's rulemaking efforts were filled with “excessive ambiguity, confusion, and uncertainty.”¹⁴ In 1980, Congress legislated to limit the Commission's authority, by imposing additional procedural obligations on section 18 rulemaking.¹⁵ Among other things, Congress created additional procedural rights, well beyond the Administrative Procedure Act's baseline procedural requirements, such as requiring the FTC to issue an ANPR with numerous specific requirements, which the Commission must submit to Congress, for each rulemaking.¹⁶

Congress' harsh reaction to the FTC's overreach only makes sense if we understand that section 18 was created and then expanded not to give the Commission free-ranging rulemaking authority, but to curb it. We should be exacting in following the requirements of section 18, lest we risk repeating history—drawing Congressional ire that that could further limit our authority and budget. Indeed, section 18's rulemaking requirements, while demanding, are the means of assuring that we act within the parameters established by Congress.

¹⁰ Magnuson-Moss Warranty Act of 1975, Public Law 93-637, 88 Stat. 2183.

¹¹ See J. Howard Beales III, *The Fed. Trade Comm'n's Use of Unfairness Authority: Its Rise, Fall, and Resurrection*, 22 J. of Pub. Pol'y & Mktg. 192, 193 (2003) (citing FTC Staff Report on Television Advertising to Children (Feb. 1978); Notice of Proposed Rulemaking on Television Advertising to Children, 43 FR 17967 (Apr. 27, 1978)). In the 1970s, the Commission aggressively used its rulemaking authority—so aggressively that it has been called the “second most powerful legislature in America.” Timothy J. Muris, *The Consumer Protection Mission: Guiding Principles and Future Direction*, 51 Antitrust L.J. 625, 625 (1982). The approach of today's Majority threatens to turn back the clock to this earlier, ill-advised approach.

¹² *Id.* at 193.

¹³ *Id.*

¹⁴ S. Rep. No. 96-500, at 3 (1979).

¹⁵ Federal Trade Commission Improvements Act of 1980, Public Law 96-252, 94 Stat. 374.

¹⁶ *Id.*

As an initial matter, this Rule's procedural irregularities begin with how the Rule was finalized in a compressed time frame. Given the rigorous demands of section 18 rulemaking, historically, it has taken the Commission, on average, 5.57 years to issue a rule after the Magnuson-Moss procedures were enacted.¹⁷ That, apparently, was too much time and procedure for the Majority. In 2021, during the pendency of this rulemaking, the Commission made changes to its rules of practice,¹⁸ over objections from the Commissioners in the Minority, to limit the efficacy of section 18's procedural safeguards and compress rulemaking timeframes.¹⁹ Among other things, the Commission revised the Rules of Practice so as to remove selection of the Presiding Officer from an independent judge and assign that role to the Chair; strip the Presiding Officer of significant control over the hearing process; and narrow opportunities for the public to help determine which factual issues are in dispute.²⁰ Then-Commissioners Phillips and Wilson dissented, noting: “What [these] changes—adopted without public input—in fact do is fast-track regulation at the expense of public input, objectivity, and a full evidentiary record.”²¹

Apparently not content with even these procedural shortcuts and compressed timeframe, political leadership now speeds to the finish line with minimal opportunity for Commissioner engagement on the final Rule. There should be ample opportunity for robust consideration and dialogue leading up to a Commission vote on any regulation, and especially for a highly consequential rule. Such opportunity for dialogue may assuage concerns, produce constructive changes, and ultimately lead to a better result. Indeed, in the past where political leadership has been willing to engage and make needed modifications preceding votes, that consideration and engagement have been very valuable and led to bipartisan support for Commission actions.

Here, however, the time period for me to review this economy-wide Rule was a matter of weeks. Those weeks were also packed with dozens of cases, one other rulemaking, and other policy matters. (Remarkably, the Chair had this draft final Rule for some time before it was circulated to the other Commissioners.) Reviewing the NPRM was no substitute for robust discussion and

¹⁷ Jeffrey S. Lubbers, *It's Time To Remove the “Mossified” Procedures for Removing FTC Rulemaking*, 83 Geo. Wash. L. Rev. 1979, 1997 (2015).

¹⁸ Press Release, Fed. Trade Comm'n, *FTC Votes to Update Rulemaking Procedures, Sets Stage for Stronger Deterrence of Corporate Misconduct* (July 1, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-votes-update-rulemaking-procedures-sets-stage-stronger-deterrence-corporate-misconduct>.

¹⁹ See Dissenting Statement of Comm'rs Christine S. Wilson and Noah Joshua Phillips, *Regarding the Comm'n Statement On the Adoption of Revised Section 18 Rulemaking Procedures* (July 9, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591702/p210100_wilsonphillips_joint_statement_-_rules_of_practice.pdf.

²⁰ *Id.* at 3–5.

²¹ *Id.* at 3.

negotiation related to the final Rule's language and statement of basis and purpose, as the final Rule differs in important ways from the rule as proposed. The push to finalize is inexcusable, particularly because it is a discretionary rulemaking with no due date (imposed by Congress or otherwise). For those tracking the Rule and national politics closely, this rush to the finish line (and less than a month from a Presidential election) is no surprise. This Rule is connected to the current administration's efforts relating to so-called junk fees (which are beginning to make a regular appearance before elections²²), and it has been in the spotlight for some time, including at the White House²³ and now on the campaign trail.²⁴

But elevating political goals comes at a high price, harms policy efforts that might otherwise benefit consumers, and undermines the Commission's legitimacy. Publicly appearing to refuse to keep an open mind on a final rule or to prejudge complex policy questions, along with an apparent unwillingness to reconsider various aspects of a rulemaking may create PR buzz for the campaign trail and score political points. But that posture creates real legal risk for the Rule. Statements from the White House²⁵

²² See generally Betsy Klein et al., *Biden Cracks Down on “Junk Fees” in New Economic Focus Ahead of Midterms*, CNN (Oct. 26, 2022), <https://www.cnn.com/2022/10/26/politics/biden-bank-fees-speech/index.html>.

²³ See, e.g., *Biden-Harris Administration Announces Broad New Actions to Protect Consumers from Billions in Junk Fees*, The White House (Oct. 11, 2023) (“The FTC proposed a ‘click to cancel’ rule in March of 2023, that, if finalized as proposed, would require sellers to make it as easy for consumers to cancel their enrollment as it was to sign up. This rule would rescue consumers from seemingly never-ending struggles to cancel unwanted subscription payment plans for everything from cosmetics to gym memberships.”), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/11/biden-harris-administration-announces-broad-new-actions-to-protect-consumers-from-billions-in-junk-fees/>.

²⁴ See, e.g., *A New Way Forward*, KamalaHarris.com, *supra* note 4.

²⁵ See, e.g., President Biden (@POTUS), *X.com* (Aug. 12, 2024) (“We’re making it easier to cancel subscriptions and memberships. You shouldn’t have to navigate a maze just to cancel unwanted subscriptions and recurring payments. The FTC is hard at work finalizing its ‘Click to Cancel’ rule that it proposed to make this process a requirement.”), <https://x.com/POTUS/status/1823037212885414107>; see also *FACT SHEET: Biden-Harris Administration Launches New Effort to Crack Down on Everyday Headaches and Hassles That Waste Americans’ Time and Money*, The White House (Aug. 12, 2024) (“Today, President Biden and Vice President Harris are launching ‘Time Is Money,’ a new governmentwide effort to crack down on all the ways that corporations . . . add unnecessary headaches and hassles to people’s days and degrade their quality of life. . . . The Federal Trade Commission (FTC) has proposed a rule that, if finalized as proposed, would require companies to make it as easy to cancel a subscription or service as it was to sign up for one. The agency is currently reviewing public comments about its proposal.”), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/08/12/fact-sheet-biden-harris-administration-launches-new-effort-to-crack-down-on-everyday-headaches-and-hassles-that-waste-americans-time-and-money/>.

and related statements from the Chair²⁶ concerning this rule—and other matters related to her tenure or connected to her party's campaign efforts²⁷—raise the

²⁶ See, e.g., Lina Khan (@linakhanFTC), *X.com* (Aug. 12, 2024) (“As @POTUS notes, @FTC’s proposal would require that firms make it as easy to cancel a subscription as it is to sign up. Too often people have to jump through endless hoops—or end up stuck paying for services they don’t want. Our rule would end this tax on your time & money.”), <https://x.com/linakhanFTC/status/1823094653962289640>. That Tweet came in response to the President unequivocally saying, “[w]e’re making it easier to cancel subscriptions and memberships,” and signaling the proposal would be finalized consistent with the NPRM. See President Biden (@POTUS), *supra* note 25. Other statements are similarly probative of apparent conclusions being reached about the contours of the final rule. See, e.g., Chair Lina M. Khan, Remarks at Center for American Progress, at 3–4 (Sept. 25, 2024) (“We’ve also unfortunately seen a rise in subscription traps. We’ve all been there. Every month, you’re paying for that gym membership you don’t really use, or streaming services you never signed up for in the first place. But it’s absurdly difficult to actually cancel these services. You have to call customer service and spend an hour on the phone with a bot before you finally get through to a human being. Customer Service then transfers you to Memberships. They transfer you to Cancellations. And then suddenly the call drops and you have to do it all over again. It can feel like you’re stuck in some type of endless doom loop. And many people understandably just give up—and pay dozens if not hundreds of dollars for subscriptions they don’t want or need. And of course, that’s kind of the point: to wear you down and keep taking your money, month after month. I’m excited that the Commission will be considering finalization of a ‘click to cancel’ rule that would require companies to make it just as easy to cancel a subscription as it is to sign up for one.”), https://www.ftc.gov/system/files/ftc_gov/pdf/20240925-remarks-chair-khan-center-for-american-progress.pdf; see also Chair Lina M. Khan, Remarks at Strike Force on Unfair and Illegal Pricing Public Convening, at 2 (Aug. 1, 2024) (“We’re currently working toward finalizing our ‘click to cancel’ rule. Too often, businesses require people to jump through endless hoops just to cancel a subscription. Customers end up paying dozens if not hundreds of dollars a month in subscriptions they want to escape. Our proposed rule would require that companies make it as easy to cancel a subscription as it is to sign up for one—ending this tax on people’s time and money.”), https://www.ftc.gov/system/files/ftc_gov/pdf/2024.08.01-remarks-chair-khan-strike-force-public-convening.pdf. In light of such statements unambiguously reflecting a firm belief in the need for regulatory action—and all but committing to the proposed solution—it is risible to suggest this rule was not effectively baked well before the Commission’s vote.

²⁷ See, e.g., Talmon Joseph Smith, *Lina Khan Ends FTC Term. What’s Next for Her?*, *Seattle Times* (Oct. 1, 2024) (“Q: You’ve not gotten any whispers, any word that you will not be wanted in a Harris administration? A. No, I think to the contrary.”), <https://www.seattletimes.com/business/lina-khan-ends-ftc-term-whats-next-for-her/>; see generally Ben Brody, *Lina Khan Hits the Road with Democrats Ahead of Election*, *Punchbowl News* (Oct. 2, 2024), <https://punchbowl.news/article/campaigns/ftc-lina-khan-campaigns-with-democrats/>; cf. Letter from James Comer, Chair, Committee on Oversight and Accountability to Lina Khan, Chair, Fed. Trade Comm’n, at 1 (Oct. 8, 2024) (“During this election season, you have engaged in partisan political activities with numerous Democrat congressional candidates, undermining the FTC’s independence and its mission to protect American consumers regardless of partisan

possibility that foreordained outcomes and political goals curtailed considering the rulemaking record with an open mind and without prejudice, as law requires.”²⁸ Today’s sprint to the finish line has shortchanged the kind of deliberation and thoughtful engagement Congress deemed appropriate when it established rulemaking requirements under the Magnuson-Moss Act.

In addition to my concern about these irregularities, I am convinced that this rulemaking has failed to satisfy section 18’s requirements for rulemaking in three ways. First, the Commission is issuing a broad final rule even though the ANPR was far narrower. This mismatch means that the Commission failed to provide in its ANPR the “brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission” that section 18 requires.²⁹ The mismatch is the result of leadership changes and priorities. The ANPR was voted out in 2019 by a bipartisan Commission under then-Chair Joseph J. Simons.³⁰ It sought public comments about centralizing existing legal requirements regarding negative options and filling gaps via section 18 rulemaking related to disclosures, consent, and cancellation.³¹ The

affiliation”), https://oversight.house.gov/wp-content/uploads/2024/10/FTC-re-Chair-Khan-Campaign-Season-Events_10.8.202423.pdf.

²⁸ See generally 15 U.S.C. 57a(b)(1); 5 U.S.C. 553(c); cf. *Air Transport Ass’n of Am. Inc. v. Nat’l Mediation Bd.*, 663 F.3d 476 (D.C. Cir. 2011); *Int’l Snowmobile Mfrs. Ass’n v. Norton*, 340 F. Supp. 2d 1249 (D. Wyo. 2004); *Nehemiah Corp. of Am. v. Jackson*, 546 F. Supp. 2d 830 (E.D. Cal. 2008). The Chair’s approach is highly unusual, given this legal risk and the Commission’s responsibility to keep an open mind—which is why, typically, Commissioners do not comment on pending rulemakings.

²⁹ 15 U.S.C. 57a(b)(2)(A).

³⁰ Fed. Trade Comm’n, Press Release, *FTC Seeks Public Comment on Ways to Improve Current Requirements for Negative Option Marketing* (Sept. 25, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/09/ftc-seeks-public-comment-ways-improve-current-requirements-negative-option-marketing>.

³¹ 84 FR 52393, 52394 (Oct. 2, 2019) (“The Commission seeks comments on ways to improve its existing regulations for negative option marketing, a common form of marketing where the absence of affirmative consumer action constitutes assent to be charged for goods or services. Negative option offers are widespread in the marketplace and can provide substantial benefits for sellers and consumers. However, consumers cannot reap such benefits when marketers fail to make adequate disclosures, bill consumers without their consent, or make cancellation difficult or impossible. Over the years, such problematic negative option practices have remained a persistent source of consumer harm, often saddling consumers with recurring payments for products and programs they did not intend to purchase or did not want. In the past, the Commission has sought to address such practices through individual law enforcement cases and a patchwork of regulations. Nevertheless, problems persist, and consumers continue to submit thousands of complaints to the FTC each year about negative option marketing. To address these concerns, the Commission seeks comments on ways to improve existing regulatory requirements, including whether it should use its rulemaking authority under the FTC Act to expand the scope

current Majority took the bipartisan ANPR and politically supercharged it.

Importantly, the ANPR did not contemplate broader regulation prohibiting all misrepresentations of material fact related to products that have negative option features. The ANPR tailored its inquiry by “. . . highlighting five basic section 5 requirements that negative option marketing must follow to avoid deception”: (1) disclosure of material terms of a negative option offer; (2) clear and conspicuous disclosures; (3) pre-purchase disclosures; (4) consent; (5) cancellation.³² Absent from this list is anything about prohibiting all misrepresentations of material fact related to any product that happens to have a negative option feature. Similarly, when the ANPR stated that the Commission was seeking comment “to reduce consumer harm created by deceptive or unfair negative option marketing,” it specified the Commission’s interest pertained to “disclosures, consumer consent, and cancellation.”³³ Again, absent from that list was anything about prohibiting all misrepresentations of material fact related to marketing of any product that has a negative option feature.

When Commission leadership changed in 2021, the “area of inquiry” changed as well. Almost immediately, the Commission under Chair Khan disrupted this particular rulemaking process to issue an Enforcement Policy Statement Regarding Negative Option Marketing³⁴—sub-regulatory guidance on the very same topic as the rulemaking itself. The Commission then issued a Notice of Proposed Rulemaking (“NPRM”) in 2023 that introduced into the rulemaking—for the first time—the notion of prohibiting misrepresentations related to marketing of products with negative option features.³⁵ Former Commissioner Christine S. Wilson dissented from the issuance of the NPRM for this (among other) reasons. In her dissenting statement, Commissioner Wilson explained: “Importantly, we did not seek comment in the ANPR about whether an expanded negative option rule should address general misrepresentations; no comments are cited in the NPRM to support the inclusion of these provisions.”³⁶

and coverage of the existing Negative Option Rule.”).

³² *Id.* at 52395.

³³ *Id.* at 52396.

³⁴ Fed. Trade Comm’n, Press Release, *FTC To Ramp Up Enforcement Against Illegal Dark Patterns that Trick or Trap Consumers Into Subscriptions* (Oct. 28, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions>.

³⁵ Fed. Trade Comm’n, Press Release, *Federal Trade Comm’n Proposes Rule Provision Making It Easier for Consumers to “Click to Cancel” Recurring Subscriptions and Memberships* (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/federal-trade-commission-proposes-rule-provision-making-it-easier-consumers-click-cancel-recurring>.

³⁶ Dissenting Statement of Comm’r Christine S. Wilson, *Notice of Proposed Rulemaking, Negative Option Rule*, at 3 (Mar. 23, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p064202_commissioner_wilson_dissent_negative_option_rule_finalrevd_0.pdf.

The Statement of Basis and Purpose (“SBP”) accompanying the final Rule cursorily dismisses concerns about the ANPR’s adequacy, dubiously arguing that section 18 requires no such “specificity” in describing the area of inquiry.³⁷ But the whole purpose of section 18’s requirement of a description of what the Commission aims to do is to elicit public comment to inform the Commission about its choices. Indeed, section 18 requires an ANPR to invite interested parties to provide “suggestions or alternative methods for achieving such objectives.”³⁸ Parties cannot possibly include alternative methods if the ANPR wholly fails to identify the objective, *i.e.*, regulating misrepresentations in marketing of products with negative option features.

It is telling that the ANPR here only elicited 17 comments,³⁹ while the NPRM (which made clear that the Commission was significantly expanding its focus) elicited 16,000 comments.⁴⁰ The narrowness of the ANPR meant the Commission could not, consistent with section 18, proceed to a much broader NPRM.⁴¹ In choosing to interpret the ANPR (and the 17 comments it elicited) as sufficient predicate for the much-expanded NPRM, the Commission cut itself off from valuable public comments at important early stages (especially as to regulatory alternatives) and ignored the rulemaking guardrails that Congress carefully established to forestall nondelegation concerns that might otherwise exist.⁴²

The second procedural failing lies in the Commission’s failure to “prescribe . . . rules which define with specificity acts or practices which are unfair or deceptive acts or practices” as Section 18 requires.⁴³ “Because the prohibitions of section 5 of the Act are quite broad, trade regulation rules are needed to define with specificity conduct that violates the statute and to establish requirements to prevent unlawful conduct.”⁴⁴ Section 425.3 of the Rule fails Section 18’s specificity requirements. Section 425.3 prohibits any misrepresentation of material fact made in connection with the sale or promotion of a product that has a negative option feature.

Unfairness explicitly requires a cost-benefit analysis relating to the practices at issue.⁴⁵ Meanwhile, deception is a subset of the broader unfairness authority. With its focus on reasonableness and materiality, no cost-benefit analysis is required because the Commission has historically argued that deceptive practices are always harmful. So far, so good. But both unfairness, and particularly deception, require the Commission to provide sufficient evidence for a reviewing court to evaluate whether the Commission has met the legal predicate for either theory (particularly as it relates to reasonableness and materiality). While the Rule provides examples of material misrepresentations, those are merely examples. Indeed, the Commission ignores the specificity requirement by generalizing from poorly sampled past agency cases. Whatever the merits of the past cases, the Majority does not remotely come close to explaining how the evidence in those limited cases is similar to the myriad contexts an economy-wide rule would inevitably apply to.

Indeed, the Rule is not limited to misrepresentations relating to deceptive terms of negative option features (or some other specific, deceptive conduct), but instead, applies broadly to any material fact. Nor does the Rule require that the consumer actually use the negative option feature; the mere presence of a negative option feature would render any misrepresentation of material fact subject to the Rule. Taken together, the Rule is nothing more than a back-door effort at obtaining civil penalties in any industry where negative option is a method to secure payment. The Rule’s application to any misrepresentation therefore fails to meet Section 18’s “specificity” requirement,⁴⁶ and will no doubt invite serious legal challenge on this basis.⁴⁷

The Supreme Court’s decision in *AMG*, which held the language of Section 13(b) does not authorize the Commission to obtain equitable monetary relief,⁴⁸ limited the Commission’s ability to seek money for first-time violations of the FTC Act. The Commission is still able, however, to seek monetary remedies for violation of rules issued under Section 18.⁴⁹ Here, the Final Rule effectively transforms Section 5’s broad prohibition on unfair or deceptive practices into a Section 18 rule, allowing the Commission to expand its ability to seek money. Indeed, because negative option features are widely used in a variety of industries, the Rule greatly expands that ability. While I generally support *legislation*

that would grant the FTC authority under Section 13(b) to obtain court orders for redress or disgorgement (with whatever guardrails Congress deems fit), the Commission should not circumvent legislative prerogative via improper Section 18 rulemaking.

The third significant procedural flaw in this rulemaking is that the Commission failed to appropriately establish the “prevalence” of unfair and deceptive practices related to all negative option features for all products in all markets and all media (*i.e.*, with respect to the scope of this rule). According to Section 18, the Commission may issue an NPRM “only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.”⁵⁰ Section 18 further provides:

The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

(A) it has issued cease and desist orders regarding such acts or practices, or

(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.⁵¹

In the SBP, the Commission argues that it has satisfied this standard for its economy-wide rulemaking because it has issued more than 35 cases “challenging harmful negative option practices” and has received “tens of thousands of consumers complaints.”⁵² This evidence may well suggest that *some* unfair and deceptive acts related to negative option offers are indeed prevalent. But these statistics do not establish prevalence of misrepresentations of material fact related to products with negative option features, any more than the number of FTC cases and consumer complaints involving the internet means that the entire internet should be the subject of a Section 18 rulemaking prohibiting misrepresentations.

If similarity among complaints and cases only at the highest level of generality constitutes the “prevalence” sufficient to ground an economy-wide rulemaking, then a “prevalence” determination is in fact no meaningful guardrail on the Commission’s conduct at all, creating precisely the type of non-delegation concerns that Section 18’s guardrails were meant to prevent. Canons of “avoidance” warn us to avoid adopting interpretations that would render statutes unconstitutional.⁵³ To avoid precisely that fate, “prevalence” must require more than what the Commission has shown here.

A final concern here. The Rule’s failure to define with specificity the acts or practices which are unfair or deceptive, combined with the rule’s preemption of inconsistent

³⁷ SBP at 37–38.

³⁸ 15 U.S.C. 57a(b)(2)(A)(ii).

³⁹ See *Regulations.gov*, Negative Option Rule (ANPR), FTC–2019–0082, <https://www.regulations.gov/docket/FTC-2019-0082>.

⁴⁰ The Commission published 1,162 unique comments. SBP at 18. See *Regulations.gov*, Negative Option Rule (NPRM), FTC–2023–0033–0001, <https://www.regulations.gov/document/FTC-2023-0033-0001>.

⁴¹ 15 U.S.C. 57a(b)(2)(A) (“Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the *Federal Register*.”).

⁴² Cf. Dissenting Statement of Comm’r Andrew N. Ferguson, Joined by Comm’r Melissa Holyoak, *In re Non-Compete Clause Rule*, FTC Matter No. P201200, at 20–22 (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf (describing nondelegation doctrine).

⁴³ 15 U.S.C. 57a(a)(1)(B).

⁴⁴ S. Rep. No. 93–1408 at 7702, 7755, 7763 (1974) (Conf. Rep.).

⁴⁵ 15 U.S.C. 45(n).

⁴⁶ Cf. *Katharine Gibbs School (Inc.) v. FTC*, 612 F.2d 658, 661–62 (2d Cir. 1979) (setting aside FTC rule under section 18 that did not, among other things, define unfair practices with sufficient specificity).

⁴⁷ See, e.g., *id.* at 663 (“When Congress provided that the Commission’s rules must define unfair and deceptive acts with specificity, it clearly intended that the Commission’s definition would be subject to judicial review.”).

⁴⁸ *AMG Capital Mgmt., LLC v. FTC*, 593 U.S. 67, 70 (2021).

⁴⁹ 15 U.S.C. 57b(a)(1).

⁵⁰ *Id.* 57a(b)(3).

⁵¹ *Id.*

⁵² SBP at 8.

⁵³ See *Clark v. Martinez*, 543 U.S. 371, 381 (2005) (describing the canon of constitutional avoidance as “resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts”); see also Adrian Vermeule, *Saving Constructions*, 85 Geo. L. J. 1945, 1949 (1997) (providing examples of cases in which the Supreme Court construed a statute so as to avoid a constitutional question).

State laws,⁵⁴ seems likely to create confusion and, ultimately, may harm consumers. The Second Circuit rebuked the Commission for a similar approach in a prior rulemaking after the Commission had “fail[ed] . . . to define with specificity the acts or practices which are unfair or deceptive.”⁵⁵ Absent “a specification of the acts or practices which the Commission deems deceptive,” the Court explained that “the breadth of the preemption provision is such that it places in issue an indefinite variety of [S]tate laws and regulations” that were relevant to the underlying contractual relationships. Similarly, here, State laws govern the types of conduct today’s Rule attempts to regulate.⁵⁶ One risk of misguided Federal regulation is that it can confuse or jeopardize State laws and enforcement. Given the Rule’s lack of specificity, it raises that concern.

II. The Rule is troubling not only procedurally but also substantively. By singling out representations made in connection with negative option billing models and subjecting these representations to civil penalties or other monetary relief, it tilts the playing field in ways that are likely to pervert business incentives. For example, businesses may avoid using negative option billing models, even when businesses and consumers could derive significant value from them.

One might argue that no shift in incentives will happen for honest businesses because the Rule only addresses misrepresentations of material fact. In other words, all an honest business needs to do to avoid civil penalties is to tell the truth about products and services that involve negative option billing. But what constitutes a misrepresentation can sometimes be in the eye of the beholder (that is, a Commissioner).⁵⁷ Even honest businesses will have reason to reconsider the use of negative option billing now that it means subjecting themselves to potential civil penalties for misreading Commission tea leaves.⁵⁸ And businesses will also need to factor in the compliance costs associated with implementing this Rule’s disclosure, consent, and cancellation requirements—prescriptive requirements that are absent for

other billing models or less prescriptive under existing law, such as ROSCA.

These shifting incentives matter to consumers because the reason that honest businesses adopt negative option billing is to lower transaction costs between consumers and firms. For example, say I want to watch a particular streaming service at my convenience. I don’t want to be bothered with signing up and paying a fee each month that I log on; I want negative option billing—a subscription—to reduce the friction in my streaming experience. Raising the transaction costs will reduce a business’s sales and the utility consumers derive from these services. In other words, in our good intentions, we may harm the consumers and competition we are supposed to protect.⁵⁹

The Rule purports to address any overbreadth by including, consistent with the Commission’s Rules of Practice,⁶⁰ an “Exemptions” provision, which provides: “Any person to whom this Rule applies may petition the Commission for a partial or full exemption.”⁶¹ In response to such petition, “[t]he Commission may . . . issue partial or full exemptions from this part if the Commission finds application of the Rule’s requirements is not necessary to prevent the acts or practices to which the Rule relates.”⁶²

But the “Exemptions” provision does nothing to reduce the burden on firms from the overbreadth of the Rule’s coverage of all misrepresentations of material fact. Rather, taken together, they effectively shift the burden of crafting a tailored rule to regulated entities. And, once again, it appears that the Commission is tilting the playing field in a manner that is likely to harm both consumers and competition. Small businesses and new market entrants are less likely to be able to afford the potentially costly legal fees needed to petition the Commission to obtain an exemption. Even for businesses that can afford to use the exemption process, this process will impose costs on businesses, who will pass on those costs to consumers.

⁵⁹ Concurring and Dissenting Statement of Comm’r Melissa Holyoak, *Social Media and Video Streaming Services Staff Report*, FTC Matter No. P205402, at 18–19 (Sept. 19, 2024) (“The core of this agency’s mission is to protect consumers. Unfortunately, recent years have seen some Commissioners take a narrow view of that mission and where harms emanate from . . . [W]e should also protect the American people from harms that follow when we fail to robustly and comprehensively scrutinize our own policy efforts and advocacy, including for economic effects, and to anticipate potential unintended consequence.”), https://www.ftc.gov/system/files/ftc_gov/pdf/commissioner-holyoak-statement-social-media-6b.pdf; cf. Dissenting Statement of Comm’r Melissa Holyoak, Joined by Comm’r Andrew N. Ferguson, *In re Rytr, LLC*, FTC Matter No. 2323052, at 5 (Sept. 25, 2024) (“We must protect consumers through robust enforcement. Indeed, the Commission is at its best when it does so. But we must also think carefully about the potential harms to consumers and innovation that attend misguided enforcement. Today’s misguided complaint and its erroneous application of section 5 will likely undermine innovation in the AI space. I therefore respectfully dissent.”), https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytr-statement.pdf.

⁶⁰ 16 CFR 1.25, 1.31.

⁶¹ 16 CFR 425.8.

⁶² *Id.*

Raising potential costs for consumers through an improperly promulgated rule is not a desirable outcome at any time, but especially not in an inflationary economy. Businesses and consumers will not be alone in bearing increased costs. Conducting the exemption process will continue to drain FTC staff resources—reducing the time that our talented staff could devote to enforcing the clear authorities Congress has given us, such as ROSCA.⁶³

A final point here. I also have concerns about the Commission’s economic analysis of the quantifiable benefits that may result from the Rule’s substantive requirements. For example, the Commission’s estimate related to the upper bound of the Rule’s benefits for consumers who cancel subscriptions with in-person enrollment is based in part on the complaints of 25 individual consumers in a single industry,⁶⁴ and a number of other simplifying assumptions.⁶⁵ But this self-selected group of 25 consumers does not comprise a random sample, even among people who were not able to cancel subscriptions with in-person enrollment on their first attempt.⁶⁶ It is at least possible that other individuals who cancelled subscriptions in person had different experiences or expectations than these particular consumers—and therefore did not voice any complaint. Indeed, given that consumer experiences and expectations may vary significantly across industries and products, there is no reason to believe that balancing of harms and benefits of these consumers can be appropriately extrapolated to the entire economy. Thus, the Commission’s estimated benefits are not based on what could be characterized as a representative sample. Without knowing the frequency of consumers having significant difficulty cancelling in-person subscriptions, it is not possible to assess how much weight to place on the estimate of the high end of the range of benefits from the proposed rule. Most of the difference between the low-end and high-end estimates of benefits is driven by the estimate of the high end of the benefits for in-person subscriptions.

III. This Rule is particularly disappointing because it represents two missed opportunities. In 2019, a bipartisan Commission unanimously voted in favor of

⁶³ To be clear, my concern is not with the exemption process itself (or its inclusion in the Rule), but with the enormous work it must do to compensate for the overbreadth of the provision regarding misrepresentations.

⁶⁴ See, e.g., SBP at 171 (“Notwithstanding IHRSA’s assertion that many fitness clubs offer online cancellation, at least 25 individual consumers submitted comments attesting to the difficulties of canceling gym memberships.”).

⁶⁵ *Id.* at 173 (“Based on these comments, the Commission makes the simplifying assumption that the worst gym membership cancellation experiences involve three failed attempts at cancellation, each costing one hour of time, and that, because of those cancellation failures, three unwanted monthly charges were processed.”); see *id.* at 169–70 (explaining how, in its economic analysis for the Rule, “the Commission proxies the per-cancellation benefits of an additional, remote, method of cancellation by looking at those benefits in the context of gym memberships”).

⁶⁶ See *id.* at 171.

⁵⁴ 16 CFR 425.7(a) (“Relation to State Laws”) (“*In General*. This part shall not be construed as superseding, altering, or affecting any State statute, regulation, order, or interpretation relating to negative option requirements, except to the extent it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.”).

⁵⁵ See *Katharine Gibbs School*, 612 F.2d at 667.

⁵⁶ See, e.g., SBP at 145–46, 214.

⁵⁷ Cf. Statement of Comm’r Christine S. Wilson Concurring In Part and Dissenting In Part, *FTC v. Neurometrix, Inc.*, FTC Matter No. 1723130 (Feb. 28, 2020), (disagreeing with the majority of the Commission on claim interpretation and substantiation for certain claims), https://www.ftc.gov/system/files/ftc_gov/pdf/2024.08.01-remarks-chair-khan-strike-force-public-convening.pdf.

⁵⁸ Some businesses were already subject to disclosure requirements under existing laws such as ROSCA and the TSR. But those laws are more limited. For example, ROSCA section 8403 states that for goods or services sold through a negative option feature, the seller must “clearly and conspicuously disclose all material terms of the transaction before obtaining the consumer’s billing information.” 15 U.S.C. 8403.

issuing the ANPR, which was intended to (1) consolidate the requirements from various laws the FTC enforces, providing businesses who have to navigate this patchwork with greater clarity, thereby benefiting both consumers and businesses; and (2) explore whether a Section 18 rule should fill any gaps “when marketers fail to make adequate disclosures, bill consumers without their consent, or make cancellation difficult or impossible.”⁶⁷ Today’s final Rule could have stayed that prudent course rather than expanding in scope and complexity as it has under this Commission.

The second missed opportunity has taken place every day since the Commission expanded the scope of the rulemaking. This Commission chose to devote scarce staff resources to this overbroad rulemaking—one that seems likely to be challenged in court, which will lead to even more taxpayer-funded expenses—rather than direct our talented staff to draft a rule within the scope of our authority or bring enforcement actions

using clear legal authorities like ROSCA and TSR. In my time at the Commission, I have voted in support of numerous ROSCA cases, including *NGL*,⁶⁸ *Care.com*,⁶⁹ and *Legion Media*,⁷⁰ and numerous TSR cases, including *Career Step*,⁷¹ *Carshield*,⁷² and *Panda Benefit Services*.⁷³ As I have said elsewhere, I believe

⁶⁸ *FTC v. NGL Labs, LLC*, No. 2:24-cv-5753 (C.D. Cal.), <https://www.ftc.gov/legal-library/browse/cases-proceedings/ngl>.

⁶⁹ *FTC v. Care.com, Inc.*, No. 1:24-cv-987 (W.D. Tex.), <https://www.ftc.gov/legal-library/browse/cases-proceedings/carecom-inc-ftc-v>.

⁷⁰ *FTC v. Legion Media LLC*, FTC Matter No. 2423034, <https://www.ftc.gov/legal-library/browse/cases-proceedings/242-3034-legion-media-llc-et-al-ftc-v>.

⁷¹ *FTC v. Career Step, LLC*, FTC Matter No. 2323019, <https://www.ftc.gov/legal-library/browse/cases-proceedings/232-3019-career-step-llc-ftc-v>.

⁷² *FTC v. NRRM, LLC*, FTC Matter No. 2223031, <https://www.ftc.gov/legal-library/browse/cases-proceedings/2223031-carshield>.

⁷³ *FTC v. Panda Benefit Servs., LLC*, FTC Matter No. 2423041, <https://www.ftc.gov/legal-library/browse/cases-proceedings/2423041-panda-benefit-services-llc-ftc-v>.

the Commission is at its best when it focuses on enforcing the law, not writing it.⁷⁴ But I am not reflexively opposed to rulemaking where Congress has delegated the Commission relevant authority and we act consistent with that authority.⁷⁵ Unfortunately, that is not what today’s Rule is. Instead, we have an ill-disguised political maneuver from the Majority in the form of a rule, one rushed to publication to advance the prospects of the Chair’s preferred presidential candidate.

I dissent.

[FR Doc. 2024–25534 Filed 11–14–24; 8:45 am]

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⁷⁴ Prepared Statement of Comm’r Melissa Holyoak, Fed. Trade Comm’n, Before the Subcomm. on Innovation, Data, and Commerce of the Energy and Commerce Comm., U.S. House of Representatives, Concerning “The Fiscal Year 2025 Federal Trade Commission Budget,” at 2–4 (July 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/commissioner-holyoak-testimony-7-5-24.pdf.

⁷⁵ *Id.*

⁶⁷ 84 FR 52393, 52394.

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